

## 74 Am. Jur. 2d Terrorism Summary

American Jurisprudence, Second Edition | May 2021 Update

### Terrorism

Marie K. Pesando, J.D.

### [Correlation Table](#)

## Summary

### Scope:

This article discusses terrorism, generally, with discussion of particular statutes dealing with terrorism, civil liability for, and criminal prosecution of, terrorism, with specific discussion of particular terrorist acts as constituting criminal offenses.

### Federal Aspects:

Some of the federal statutes discussed herein are the Homeland Security Act, the USA Patriot Act, and the Terrorism Risk Insurance Act.

### Treated Elsewhere:

Aliens denial of admission and of visas based on terrorist activities, see [Am. Jur. 2d, Aliens and Citizens §§ 1404 to 1409](#); preclusion of grant of asylum based on terrorist activities, see [Am. Jur. 2d, Aliens and Citizens § 1100](#); deportation and removal for terrorist activities, see [Am. Jur. 2d, Aliens and Citizens §§ 1575, 1666 to 1690](#)

Civil defense, see [Am. Jur. 2d, Military and Civil Defense §§ 1 et seq.](#)

Damages for mental suffering as including damages resulting from party's terror, see [Am. Jur. 2d, Damages § 215](#)

Habeas corpus, see [Am. Jur. 2d, Habeas Corpus §§ 1 et seq.](#)

Rewards for information used to combat terrorism, see [Am. Jur. 2d, Rewards § 5](#)

Seditious activities, see [Am. Jur. 2d, Sedition, Subversive Activities, and Treason §§ 1 et seq.](#)

Terrorist acts by agents of foreign states as within immunity exception provision of Federal Sovereign Immunities Act, see [Am. Jur. 2d, International Law §§ 151 to 158](#)

Terroristic threats: criminal liability for, under state statutes, generally, see [Am. Jur. 2d, Extortion, Blackmail, and Threats §§ 56 to 62](#); constitutionality of statutes punishing, under First Amendment right to free speech, see [Am. Jur. 2d, Constitutional Law § 527](#)

War powers of federal and state governments, see [Am. Jur. 2d, War §§ 12 to 35](#)

**Research References:**

**Westlaw Databases**

[American Law Reports \(ALR\)](#)  
[West's A.L.R. Digest \(ALRDIGEST\)](#)  
[American Jurisprudence 2d \(AMJUR\)](#)  
[American Jurisprudence Proof of Facts \(AMJUR-POF\)](#)  
[AP Alert—Terrorism \(APALERTTERROR\)](#)  
[Bioterrorism Week \(BIOTERROR\)](#)  
[BNA Homeland Security Briefing \(BNA-HOMELAND\)](#)  
[9-11 Commission Reports \(COM911\)](#)  
[Federal Habeas Manual \(FEDHABMAN\)](#)  
[Federal Military Law—Cases \(FMIL-CS\)](#)  
[Guantanamo Bay Military Commissions—Motions and Decisions \(FMIL-GBDOC\)](#)  
[Homeland Security and Antiterrorism—Texts, Periodicals, and Primary Law \(HOMELAND-ALL\)](#)  
[Homeland Security and Antiterrorism—Codes and Administrative Materials \(HOMELAND-CODREG\)](#)  
[Homeland Security and Antiterrorism—Cases \(HOMELAND-CS\)](#)  
[Homeland Security—News \(HOMELAND-NEWS\)](#)  
[Homeland Security and Antiterrorism—Texts and Periodicals \(HOMELAND-TP\)](#)  
[Guide to Homeland Security \(HSASUM\)](#)  
[National Security Investigations and Prosecutions \(NSIAP\)](#)  
[Studies in Conflict & Terrorism \(STUDCONFT\)](#)  
[Telecommunications International \(TELECINTL\)](#)  
[United States Code Annotated \(USCA\)](#)  
[Special Warfare \(WARFARE\)](#)

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## 74 Am. Jur. 2d Terrorism I Refs.

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### Terrorism










Marie K. Pesando, J.D.

#### I. In General










[Topic Summary](#) | [Correlation Table](#)

### Research References

#### West's Key Number Digest

West's Key Number Digest, Attachment  2, 25, 49, 50, 64  
West's Key Number Digest, [Commerce](#)  75  
West's Key Number Digest, Execution  20 to 22, 55  
West's Key Number Digest, [Habeas Corpus](#)  662.1  
West's Key Number Digest, [Health](#)  353  
West's Key Number Digest, [Insurance](#)  1008, 1021  
West's Key Number Digest, [International Law](#)  10.19, 10.30, 10.35  
West's Key Number Digest, [United States](#)  57  
West's Key Number Digest, [War and National Emergency](#)  1018, 1101, 1123, 1129, 1130, 1132(1), 1141 to 1144

#### A.L.R. Library

A.L.R. Index, Terrorism  
West's A.L.R. Digest, Attachment  2, 25, 49, 50, 64  
West's A.L.R. Digest, Commerce  75  
West's A.L.R. Digest, Execution  20 to 22, 55  
West's A.L.R. Digest, Habeas Corpus  662.1  
West's A.L.R. Digest, Health  353  
West's A.L.R. Digest, [Insurance](#)  1008, 1021  
West's A.L.R. Digest, [International Law](#)  10.19, 10.30, 10.35  
West's A.L.R. Digest, United States  57  
West's A.L.R. Digest, [War and National Emergency](#)  1018, 1101, 1123, 1129, 1130, 1132(1), 1141 to 1144

**Trial Strategy**

[Proof of Coverage or Exclusion of Alleged Act of Terrorism Under Commercial Property Insurance, 74 Am. Jur. Proof of Facts 3d 233](#)

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## 74 Am. Jur. 2d Terrorism § 1

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### Terrorism

Marie K. Pesando, J.D.

#### I. In General

### § 1. Generally; definitions

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [United States](#) 57

West's Key Number Digest, [War and National Emergency](#) 1101, 1129

#### A.L.R. Library

[Recovery of Workers' Compensation for Acts of Terrorism](#), 20 A.L.R.6th 729

The federal government's interest in combating terrorism is an urgent objective of the highest order.<sup>1</sup> Confusion as to the definition of terrorism abounds.<sup>2</sup> There are numerous statutes defining "terrorism" or "acts of terrorism."<sup>3</sup> The Homeland Security Act<sup>4</sup> defines terrorism as any activity that involves an act that is dangerous to human life or potentially destructive of critical infrastructure or key resources and is a violation of the criminal laws of the United States or of any State or other subdivision of the United States and appears to be intended to intimidate or coerce a civilian population, to influence the policy of a government by intimidation or coercion, or to affect the conduct of a government by mass destruction, assassination, or kidnapping.<sup>5</sup>

Acts of terrorism are by their very definition extreme and outrageous and intended to cause the highest degree of emotional distress, literally, terror.<sup>6</sup>

The Secretary of State has published guidelines for thwarting efforts by international terrorists to enlist the unwitting assistance of international aviation travelers in terrorist activities.<sup>7</sup>

The President may appoint a Deputy Attorney General for Combating Domestic Terrorism.<sup>8</sup>

An administrative organization may name community-based national and community service projects in honor of the victims of the September 11, 2001, terrorist attacks after obtaining the permission of an appropriate member of the victim's family and the entity carrying out the project.<sup>9</sup>

## CUMULATIVE SUPPLEMENT

### Statutes:

[Exec. Order No. 13584 \(76 Fed. Reg. 56495 \(Sept. 15, 2011\)\)](#) established within the Department of State, in accordance with [5 U.S.C.A. § 3161](#), a temporary organization to be known as the Counterterrorism Communications Support Office (CCSO), to perform the specific project of supporting agencies in government-wide public communications activities targeted against violent extremism and terrorist organizations, especially al-Qa'ida and its affiliates and adherents, to audiences abroad by using communication tools designed to counter violent extremism and terrorism that threaten the interests and national security of the United States.

### Cases:

In context of procedural due process, while government no doubt has a significant and even compelling interest, a United States citizen placed on no-fly list has countervailing liberty interests and is entitled to a meaningful opportunity to challenge that placement. [U.S.C.A. Const.Amend. 5. Tarhuni v. Holder, 8 F. Supp. 3d 1253 \(D. Or. 2014\)](#).

Estates and family members of three United States soldiers who were abducted and murdered while serving in Iraq were entitled to non-economic damages in amount of \$5.0 million for pain and suffering of soldiers, in action under Foreign Sovereign Immunities Act (FSIA) against Islamic Republic of Iran and Islamic Revolutionary Guard Corps (IRGC), alleging that defendants trained and funded terrorist organization involved in soldiers' deaths, even though beatings of soldiers did not take place over extended period of time, where soldiers were kicked or otherwise severely beaten in the head while handcuffed and while already suffering from severe gunshot wounds. [Fritz v. Islamic Republic of Iran, 324 F. Supp. 3d 54, 101 Fed. R. Serv. 3d 647 \(D.D.C. 2018\)](#).

## [END OF SUPPLEMENT]

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### Footnotes

- 1 [Al Haramain Islamic Foundation, Inc. v. U.S. Dept. of TheTreasury, 2011 WL 4424934 \(9th Cir. 2011\)](#).
- 2 [U.S. v. Yousef, 327 F.3d 56, 61 Fed. R. Evid. Serv. 251 \(2d Cir. 2003\)](#).
- 3 As to the statutory definitions of "international terrorism," "domestic terrorism," and "federal crime of terrorism," see §§ [15, 16](#).
- 4 [6 U.S.C.A. §§ 101 et seq.](#), discussed further in § 3.
- 5 [6 U.S.C.A. § 101\(16\)](#).
- 6 [Campuzano v. Islamic Republic of Iran, 281 F. Supp. 2d 258 \(D.D.C. 2003\)](#); [Stethem v. Islamic Republic of Iran, 201 F. Supp. 2d 78 \(D.D.C. 2002\)](#).
- 7 [22 U.S.C.A. § 5512\(a\)](#).
- 8 As to the publication of rewards for providing terrorist-related information, see [Am. Jur. 2d, Rewards § 5](#).
- As to appointment of attorneys general, see [Am. Jur. 2d, Attorney General § 42](#).

9 [42 U.S.C.A. § 12671.](#)

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## 74 Am. Jur. 2d Terrorism § 2

American Jurisprudence, Second Edition | May 2021 Update

### Terrorism

Marie K. Pesando, J.D.

#### I. In General

## § 2. USA Patriot Act

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [War and National Emergency](#)  1101, 1129

In response to the events of September 11, 2001, Congress enacted the USA Patriot Act,<sup>1</sup> which gave federal officials greater power to conduct surveillance within the United States for purposes of both preventing terrorism and monitoring the activity of foreign intelligence agents.<sup>2</sup> Among other measures, the Act established a counterterrorism fund<sup>3</sup> and enacted the International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001,<sup>4</sup> whose purpose is to increase the strength of United States measures to prevent, detect, and prosecute international money laundering and the financing of terrorism.<sup>5</sup>

The USA Patriot Act also enhanced the federal government's surveillance procedures by authorizing the delay of notice of the execution of a warrant<sup>6</sup> and amending the Foreign Intelligence and Surveillance Act of 1978<sup>7</sup> to, among other things, expand pen register and trap-and-trace authority<sup>8</sup> and access to business records.<sup>9</sup>

New immigration procedures were imposed by the Patriot Act, including the mandatory detention of suspected terrorists<sup>10</sup> and a foreign student monitoring program.<sup>11</sup> The Act also created several new crimes and amended existing criminal statutes.<sup>12</sup>

The USA Patriot Act does not violate the Ex Post Facto Clause.<sup>13</sup>

### Practice Tip:

No private cause of action exists to enforce the USA Patriot Act.<sup>14</sup>



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Footnotes

- 1 Pub. L. No. 107-56, 115 Stat. 272 (2001).
- 2 American Civil Liberties Union v. U.S. Dept. of Justice, 265 F. Supp. 2d 20 (D.D.C. 2003).
- 3 Pub. L. No. 107-56, § 101, 115 Stat. 272 (2001).
- 4 Pub. L. No. 107-56, § 301, 115 Stat. 272 (2001).
- 5 Pub. L. No. 107-56, § 302, 115 Stat. 272 (2001).
- 6 Pub. L. No. 107-56, § 213, 115 Stat. 272 (2001).
- 7 50 U.S.C.A. §§ 1801 et seq.  
As to the Foreign Intelligence and Surveillance Act of 1978, see [Am. Jur. 2d, Searches and Seizures § 359](#).
- 8 Pub. L. No. 107-56, § 214, 115 Stat. 272 (2001).
- 9 Pub. L. No. 107-56, § 215, 115 Stat. 272 (2001).
- 10 Pub. L. No. 107-56, § 412, 115 Stat. 272 (2001).
- 11 Pub. L. No. 107-56, § 416, 115 Stat. 272 (2001).
- 12 As to criminal prosecutions for terrorism, see §§ 15 to 24.
- 13 Global Relief Foundation, Inc. v. O'Neill, 315 F.3d 748 (7th Cir. 2002), referring to U.S. Const. Art. I, § 9, cl. 3.
- 14 Medical Supply Chain, Inc. v. Neoforma, Inc., 419 F. Supp. 2d 1316 (D. Kan. 2006).

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## 74 Am. Jur. 2d Terrorism § 3

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### Terrorism

Marie K. Pesando, J.D.

#### I. In General

### § 3. Homeland Security Act

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [War and National Emergency](#)  1101, 1129

The Homeland Security Act of 2002 created the Department of Homeland Security as an executive department of the federal government.<sup>1</sup> The functions of the Department are to:<sup>2</sup>

- (1) prevent terrorist attacks within the United States;
- (2) reduce the vulnerability of the United States to terrorism;
- (3) minimize the damage, and assist in the recovery, from terrorist attacks that do occur within the United States;
- (4) carry out all functions of entities transferred to the Department, including by acting as a focal point regarding natural and man-made crises and emergency planning;
- (5) ensure that the functions of the agencies and subdivisions within the Department that are not related directly to securing the homeland are not diminished or neglected except by a specific explicit Act of Congress;
- (6) ensure that the overall economic security of the United States is not diminished by efforts, activities, and programs aimed at securing the homeland; and
- (7) monitor connections between illegal drug trafficking and terrorism, coordinate efforts to sever such connections, and otherwise contribute to efforts to interdict illegal drug trafficking.

The Act abolished the Immigration and Naturalization Service (INS)<sup>3</sup> and transferred the functions of the Federal Emergency Management Agency (FEMA)<sup>4</sup> and the Secret Service<sup>5</sup> to the Department of Homeland Security.

The Secretary of Homeland Security:<sup>6</sup>

- (1) may delegate any of his or her functions to any officer, employee, or organizational unit of the Department;
- (2) has the authority to make contracts, grants, and cooperative agreements and to enter into agreements with other executive agencies, as may be necessary and proper to carry out the Secretary's responsibilities under this chapter or otherwise provided by law; and
- (3) shall take reasonable steps to ensure that information systems and databases of the Department are compatible with each other and with appropriate databases of other Departments.

The Secretary must appoint a Special Assistant to the Secretary who shall be responsible for, among other things, creating and fostering strategic communications with the private sector to enhance the primary mission of the Department to protect the American homeland; advising the Secretary on the impact of the Department's policies, regulations, processes, and actions on the private sector; and interfacing with other relevant federal agencies with homeland security missions to assess the impact of these agencies' actions on the private sector.<sup>7</sup>

## CUMULATIVE SUPPLEMENT

### Statutes:

Title XXI of the Homeland Security Act ([6 U.S.C.A. §§ 101 et seq.](#)), as added effective December 18, 2014, sets forth chemical facility anti-terrorism standards, including measures to: identify chemical facilities of interest and covered chemical facilities; require each chemical facility of interest to submit a Top-Screen and any other information the Secretary determines necessary to enable the Department to assess the security risks associated with the facility; establish risk-based performance standards designed to address high levels of security risk at covered chemical facilities; and require each covered chemical facility to submit a security vulnerability assessment and develop, submit, and implement a site security plan.

### Cases:

Individuals allegedly listed in Terrorist Screening Center's (TSC) Terrorist Screening Database (TSDB) as known or suspected terrorists lacked Article III standing to bring Administrative Procedure Act (APA) claim against government officials regarding National Criminal Information Center's alleged use of TSDB, where individuals were not connected to any action alleged to be result of National Criminal Information Center (NCIC) information, criminal or not, gleaned from or shared with terrorist watchlist. [U.S. Const. art. 3, § 2, cl. 1](#); [5 U.S.C.A. § 706](#). [Long v. Barr, 451 F. Supp. 3d 507 \(E.D. Va. 2020\)](#).

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### Footnotes

- 1 [6 U.S.C.A. § 111\(a\)](#).
- 2 [6 U.S.C.A. § 111\(b\)](#).
- 3 [6 U.S.C.A. § 291](#).
- 4 [6 U.S.C.A. § 313](#).
- 5 [6 U.S.C.A. § 381](#).
- 6 [6 U.S.C.A. § 112\(b\)](#).
- 7 [6 U.S.C.A. § 112\(f\)](#).

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## 74 Am. Jur. 2d Terrorism § 4

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### Terrorism

Marie K. Pesando, J.D.

#### I. In General

## § 4. Bioterrorism preparedness

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Health](#)  353

West's Key Number Digest, [War and National Emergency](#)  1101, 1129

The Secretary of Health and Human Services may make grants to eligible entities to carry out demonstration programs to improve the detection of pathogens likely to be used in a bioterrorist attack, the development of plans and measures to respond to bioterrorist attacks, and the training of personnel involved with the various responsibilities and capabilities needed to respond to acts of bioterrorism upon the civilian population.<sup>1</sup>

With respect to pathogens of potential use in a bioterrorist attack, and other agents that may cause a public health emergency, the Secretary of Health and Human Services shall conduct, and award grants, contracts, or cooperative agreements for, research, investigations, experiments, demonstrations, and studies in the health sciences relating to such pathogens and the development of priority countermeasures.<sup>2</sup> In addition, the Secretary of Health and Human Services, in consultation with the Attorney General and the Secretary of Defense, may provide technical or other assistance to provide security to persons or facilities that conduct development, production, distribution, or storage of priority countermeasures.<sup>3</sup>

### Definition:

A priority countermeasure means a drug, biological product, device, vaccine, vaccine adjuvant, antiviral, or diagnostic test that the Secretary determines to be a priority to treat, identify, or prevent infection by a biological agent or toxin or harm from any other agent that may cause a public health emergency or a priority to diagnose conditions that may result in adverse health consequences or death and may be caused by the administering of a drug, biological product, device, vaccine, vaccine adjuvant, antiviral, or diagnostic test that is a priority.<sup>4</sup>



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Footnotes

- |   |                               |
|---|-------------------------------|
| 1 | 42 U.S.C.A. § 247d-7(a).      |
| 2 | 42 U.S.C.A. § 247d-6(e), (a). |
| 3 | 42 U.S.C.A. § 247d-7d(a).     |
| 4 | 42 U.S.C.A. § 247d-6(e)(4).   |

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## 74 Am. Jur. 2d Terrorism § 5

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### Terrorism

Marie K. Pesando, J.D.

#### I. In General

## § 5. Terrorist lookout committees

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [War and National Emergency](#)  1129

A terrorist lookout committee must be maintained within each United States mission to a foreign country.<sup>1</sup> The purpose of each committee is:<sup>2</sup>

- (1) to utilize the cooperative resources of all elements of the United States mission in the country in which the consular post is located to identify known or potential terrorists and to develop information on those individuals;
- (2) to ensure that such information is routinely and consistently brought to the attention of appropriate United States officials for use in administering the immigration laws of the United States; and
- (3) to ensure that the names of known and suspected terrorists are entered into the appropriate lookout databases.

Each committee must meet at least monthly<sup>3</sup> and must submit monthly reports to the Secretary of State describing the committee's activities.<sup>4</sup> The Secretary of State must submit a report on a quarterly basis to the appropriate congressional committees on the status of the terrorist lookout committees.<sup>5</sup>

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#### Footnotes

- 1 [8 U.S.C.A. § 1733\(a\).](#)
- 2 [8 U.S.C.A. § 1733\(b\).](#)
- 3 [8 U.S.C.A. § 1733\(d\).](#)
- 4 [8 U.S.C.A. § 1733\(e\).](#)
- 5 [8 U.S.C.A. § 1733\(f\).](#)

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## 74 Am. Jur. 2d Terrorism § 6

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### Terrorism

Marie K. Pesando, J.D.

#### I. In General

## § 6. Antiterrorism assistance and import bans

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Commerce](#)  75

West's Key Number Digest, [War and National Emergency](#)  1129

When the President determines that it is consistent with antiterrorism goals, any federal agency is authorized to furnish services and commodities to an eligible foreign country, subject to payment in advance of the value thereof by the foreign country.<sup>1</sup> Arms and ammunition may only be provided if they are directly related to antiterrorism assistance.<sup>2</sup> In addition, up to a specified amount may be made available to procure explosives-detection devices and other counterterrorism technology and for joint counterterrorism research and development projects on such technology conducted with NATO and major non-NATO allies under the auspices of the Technical Support Working Group of the Department of State.<sup>3</sup> Moreover, up to a specified amount in assistance may be provided to a foreign country for counterterrorism efforts if such assistance is provided for the purpose of protecting the property of the United States government or the life and property of any United States citizen or furthering the apprehension of any individual involved in any act of terrorism against such property or persons, and the appropriate congressional committees are notified.<sup>4</sup>

The President, after consulting with Congress, may ban the importation into the United States of any good or service from any country that supports terrorism or terrorist organizations or harbors terrorists or terrorist organizations.<sup>5</sup> Specifically, the President may prohibit any article grown, produced, extracted, or manufactured in Libya from being imported into the United States<sup>6</sup> and may prohibit any goods or technology, including technical data or other information, subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States, from being exported to Libya.<sup>7</sup>

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### Footnotes

<sup>1</sup> [22 U.S.C.A. § 2349aa-2\(a\)](#).

- 2 22 U.S.C.A. § 2349aa-2(c)(1).
- 3 22 U.S.C.A. § 2349aa-10(b)(1).
- 4 22 U.S.C.A. § 2349aa-10(c).
- 5 22 U.S.C.A. § 2349aa-9(a), (b).
- 6 22 U.S.C.A. § 2349aa-8(a).
- 7 22 U.S.C.A. § 2349aa-8(b).

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## 74 Am. Jur. 2d Terrorism § 7

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### Terrorism

Marie K. Pesando, J.D.

#### I. In General

## § 7. Regulation of economic transactions and confiscation of property

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [War and National Emergency](#)  1129, 1130

### A.L.R. Library

[Validity, Construction, and Operation of International Emergency Economic Powers Act, 50 U.S.C.A. ss. 1701 to 1707, 183 A.L.R. Fed. 57](#)

### Trial Strategy

[Proof of Coverage or Exclusion of Alleged Act of Terrorism Under Commercial Property Insurance, 74 Am. Jur. Proof of Facts 3d 233](#)

Under the International Emergency Economic Powers Act (IEEPA),<sup>1</sup> the President of the United States has the authority to regulate international economic transactions in order to deal with any unusual or extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States if the President declares a national emergency with respect to such threat.<sup>2</sup> The USA Patriot Act<sup>3</sup> further expanded the President's powers under IEEPA by, among other things, giving him or her the authority to block transactions involving property during the pendency of an investigation<sup>4</sup> and to confiscate any property, subject to the jurisdiction of the United States, of any foreign

person, foreign organization, or foreign country that he or she determines has planned, authorized, aided, or engaged in armed hostilities or attacks against the United States.<sup>5</sup>

The validity of IEEPA has been upheld against challenges that it violates the First Amendment<sup>6</sup> and Fifth Amendment due-process rights.<sup>7</sup> In addition, a temporary blocking of assets under IEEPA does not constitute an uncompensated taking under the Fifth Amendment.<sup>8</sup> Moreover, IEEPA is not the product of an unconstitutional delegation of legislative authority to the executive as it meaningfully constrains the President's discretion to define criminal conduct.<sup>9</sup>

The authority granted to the President by the Act does not include the authority to regulate or prohibit, directly or indirectly:<sup>10</sup>

- (1) any postal, telegraphic, telephonic, or other personal communication that does not involve a transfer of anything of value;
- (2) donations, by persons subject to the jurisdiction of the United States, of articles, such as food, clothing, and medicine, intended to be used to relieve human suffering except to the extent that the President determines that such donations (a) would seriously impair his or her ability to deal with any national emergency declared under the Act, (b) are in response to coercion against the proposed recipient or donor, or (c) would endanger Armed Forces of the United States that are engaged in hostilities or are in a situation where imminent involvement in hostilities is clearly indicated by the circumstances;
- (3) the importation from any country, or the exportation to any country, whether commercial or otherwise, regardless of format or medium of transmission, of any information or informational materials, including, but not limited to, publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact discs, CD ROMs, artworks, and news wire feeds; or
- (4) any transactions ordinarily incident to travel to or from any country, including importation of accompanied baggage for personal use, maintenance within any country including payment of living expenses and acquisition of goods or services for personal use, and arrangement or facilitation of such travel including nonscheduled air, sea, or land voyages.

It has been held that the provision of IEEPA that authorizes the President to block or stem the flow of humanitarian relief in cases of national emergency<sup>11</sup> allows the President to block any and all humanitarian efforts by a targeted entity so long as he or she declares that the provision of such relief would jeopardize his or her ability to deal with a national emergency,<sup>12</sup> but there is also authority to the contrary.<sup>13</sup> The prohibition of contributions to terrorist organizations, contained in the International Emergency Economic Powers Act (IEEPA), does not violate the First Amendment rights of potential contributors as the statute was closely drawn to further the sufficiently important government interest in stopping the spread of global terrorism.<sup>14</sup> The federal government also has the power, under IEEPA, to block or freeze the exclusively domestic assets of a domestic corporation during the pendency of an investigation into whether the corporation is linked to terrorist activities.<sup>15</sup>

In order to criminally convict a defendant for violating IEEPA, the government must prove that a defendant making a contribution to an organization knew either that the organization was a specially designated terrorist (SDT) or committed unlawful activities that caused it to be designated as a SDT and had a specific intent that the contribution be used to further the unlawful activities of the SDT.<sup>16</sup>

**Definition:**

A foreign person may be designated an SDT where it is established that the person: (a) committed or posed a significant risk of committing acts of violence for the purpose or effect of disrupting the Middle East peace process; or (b) assisted, sponsored, or provided financial, material, or technological support or services in connection with such acts of violence.<sup>17</sup>

## CUMULATIVE SUPPLEMENT

### Statutes:

[Executive Order No. 12947](#) was terminated effective September 9, 2009, by [Executive Order No. 13886](#).

### Cases:

By authorizing the President to freeze the assets of foreign enemy states and their agencies and instrumentalities, the blocking regimes of the Trading with the Enemy Act (TWEA) and the International Emergency Economic Powers Act (IEEPA) put control of foreign assets in the hands of the President so that he may dispose of them in the manner that best furthers the United States' foreign-relations and national-security interests. [50 App.U.S.C.A. § 1 et seq.](#); 28 U.S.C.A. § 1701 et seq. [Bank Markazi v. Peterson](#), 136 S. Ct. 1310 (2016).

Non-commercial family remittances are exempt from the IEEPA's regulations banning the exportation from the United States of any goods or services to Iran. International Emergency Economic Powers Act, §§ 203, 206(b), [50 U.S.C.A. §§ 1702, 1705\(b\)](#); [31 C.F.R. §§ 560.203, 560.516](#). [U.S. v. Banki](#), 660 F.3d 665 (2d Cir. 2011).

Office of Foreign Assets Control (OFAC) violated due process rights of Oregon non-profit corporation, whose stated purpose was to promote greater understanding of Islam, by failing to provide an adequate statement of reasons for its investigation prior to designation as terrorist organization subject to blocking of its assets under International Emergency Economic Powers Act (IEEPA); in four-year period between designation and redesignation, only one document could be viewed as supplying some reasons for OFAC's investigation and designation decision, blocking notice deprived corporation of ability to use any funds, and there was no evidence that failure to provide reasons for investigation promoted national security. [U.S.C.A. Const.Amend. 5](#); International Emergency Economic Powers Act, § 202, [50 U.S.C.A. § 1701](#). [Al Haramain Islamic Foundation, Inc. v. U.S. Dept. of Treasury](#), 660 F.3d 1019 (9th Cir. 2011).

## [END OF SUPPLEMENT]

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### Footnotes

- 1 [50 U.S.C.A. §§ 1701 et seq.](#)
- 2 [50 U.S.C.A. §§ 1701, 1702.](#)
- 3 The USA Patriot Act is discussed in more detail in [§ 2](#).
- 4 [50 U.S.C.A. § 1702\(a\)\(1\)\(B\).](#)
- 5 [50 U.S.C.A. § 1702\(a\)\(1\)\(C\).](#)

- 6 [Holy Land Foundation for Relief and Development v. Ashcroft](#), 219 F. Supp. 2d 57 (D.D.C. 2002), judgment aff'd, 333 F.3d 156 (D.C. Cir. 2003); [U.S. v. Al-Arian](#), 308 F. Supp. 2d 1322 (M.D. Fla. 2004); [U.S. v. Lindh](#), 212 F. Supp. 2d 541 (E.D. Va., 2002).  
However, content-based prohibitions against coordinated advocacy between an Oregon nonprofit corporation, which was designated as a terrorist organization subject to the blocking of its assets under the International Emergency Economic Powers Act (IEEPA), and a public benefit corporation established to promote understanding and appreciation between cultures in order to reduce racism, promote and support multicultural education, and provide forums for problem solving related to intercultural differences violated the organizations' First Amendment rights; although coordinated advocacy would increase purported terrorist organization's legitimacy, connection between provision of services and freeing of funds for terrorist activities was attenuated, there was no evidence of ongoing conflicts between purported terrorist organization and ally of United States as would strain relationships with allies and undermine cooperative efforts between nations to prevent terrorist attacks. [Al Haramain Islamic Foundation, Inc. v. U.S. Dept. of The Treasury](#), 2011 WL 4424934 (9th Cir. 2011).
- 7 [Holy Land Foundation for Relief and Development v. Ashcroft](#), 333 F.3d 156 (D.C. Cir. 2003); [U.S. v. Al-Arian](#), 308 F. Supp. 2d 1322 (M.D. Fla. 2004); [KindHearts for Charitable Humanitarian Development, Inc. v. Geithner](#), 647 F. Supp. 2d 857 (N.D. Ohio 2009).
- 8 [Holy Land Foundation for Relief and Development v. Ashcroft](#), 219 F. Supp. 2d 57 (D.D.C. 2002), judgment aff'd, 333 F.3d 156 (D.C. Cir. 2003); [Global Relief Foundation, Inc. v. O'Neill](#), 207 F. Supp. 2d 779, 183 A.L.R. Fed. 723 (N.D. Ill. 2002), judgment aff'd, 315 F.3d 748 (7th Cir. 2002).
- 9 [U.S. v. Amirmazmi](#), 645 F.3d 564 (3d Cir. 2011), cert. denied, 2011 WL 4536350 (U.S. 2011).
- 10 50 U.S.C.A. § 1702(b).
- 11 50 U.S.C.A. § 1702(b)(2).
- 12 [Global Relief Foundation, Inc. v. O'Neill](#), 207 F. Supp. 2d 779, 183 A.L.R. Fed. 723 (N.D. Ill. 2002), judgment aff'd, 315 F.3d 748 (7th Cir. 2002).  
Government did not exceed its statutory authority, under the International Emergency Economic Powers Act (IEEPA), by blocking assets of Islamic relief organization that was found to be a branch of an organization that had been designated a Specially Designated Global Terrorist (SDGT) where President made required finding, based on the September 11 terrorist attacks, that a state of national emergency existed; sufficient basis existed for government's conclusion that SDGT's actions posed an unusual and extraordinary threat to the United States. [Islamic American Relief Agency v. Gonzales](#), 477 F.3d 728 (D.C. Cir. 2007).
- 13 [Holy Land Foundation for Relief and Development v. Ashcroft](#), 219 F. Supp. 2d 57 (D.D.C. 2002), judgment aff'd, 333 F.3d 156 (D.C. Cir. 2003).
- 14 [U.S. v. Al-Arian](#), 308 F. Supp. 2d 1322 (M.D. Fla. 2004).
- 15 [Global Relief Foundation, Inc. v. O'Neill](#), 207 F. Supp. 2d 779, 183 A.L.R. Fed. 723 (N.D. Ill. 2002), judgment aff'd, 315 F.3d 748 (7th Cir. 2002), referring to 50 U.S.C.A. § 1702(a)(1)(B).
- 16 [U.S. v. Al-Arian](#), 308 F. Supp. 2d 1322 (M.D. Fla. 2004).
- 17 Executive Order No. 12947, 60 Fed. Reg. 5079(1995).

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## 74 Am. Jur. 2d Terrorism § 8

American Jurisprudence, Second Edition | May 2021 Update

### Terrorism

Marie K. Pesando, J.D.

#### I. In General

## § 8. Designation of foreign terrorist organizations

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [War and National Emergency](#)  1130

### A.L.R. Library

[Validity, Construction, and Application of 8 U.S.C.A. s1182\(a\)\(3\)\(B\), Providing for Inadmissibility of Persons Engaged in Terrorist Activity, 23 A.L.R. Fed. 2d 171](#)

[Validity, Construction, and Operation of "Foreign Terrorist Organization" Provision of Anti-Terrorism and Effective Death Penalty Act \(AEDPA\), 8 U.S.C.A. sec. 1189, 178 A.L.R. Fed. 535](#)

The Secretary of State is authorized to designate an organization as a foreign terrorist organization if he or she finds that:<sup>1</sup>

- (1) the organization is a terrorist organization;
- (2) the organization engages in terrorist activity or retains the capability and intent to engage in terrorist activity or terrorism; and
- (3) the terrorist activity or terrorism threatens the security of United States nationals or the national security.

The Secretary is not required to expressly find that an organization is a foreign terrorist organization engaging in terrorist activities that threaten national security where the Secretary has made such findings with respect to another organization and has concluded that the two organizations are one and the same.<sup>2</sup> Thus, when a foreign terrorist organization (FTO) is known by another name, the organization may be designated an FTO under that name as well.<sup>3</sup> Moreover, when one entity so dominates and controls another that they must be considered principal and agent, it is appropriate, under the Anti-Terrorism and Effective

Death Penalty Act (AEDPA), to look past their separate juridical identities and to treat them as aliases with respect to their designation as foreign terrorist organizations.<sup>4</sup>

**Observation:**

Unless it makes a showing of particularized need not to do so, the government must notify an organization of its impending designation as a foreign terrorist organization (FTO) and of the unclassified items upon which the government proposes to base that designation.<sup>5</sup>

Once specified members of Congress have been notified of the designation,<sup>6</sup> the Secretary of the Treasury may require United States financial institutions possessing or controlling any assets of any foreign organization included in the notification to block all financial transactions involving those assets until further directive from either the Secretary of the Treasury, Act of Congress, or order of court.<sup>7</sup> In addition, representatives and certain members of the organization are barred from entering the United States.<sup>8</sup> Perhaps the most important consequence of such a designation is that all persons within or subject to United States jurisdiction are forbidden from knowingly providing material support or resources to the organization.<sup>9</sup>

The validity of the statute<sup>10</sup> has been upheld.<sup>11</sup>

It has been held that a foreign organization is not entitled to due process in challenging its designation as a foreign terrorist organization,<sup>12</sup> but there is also authority to the contrary.<sup>13</sup> However, if a designation has become effective, a defendant in a criminal action is not permitted to raise any question concerning the validity of the issuance of such designation as a defense or an objection at any trial or hearing.<sup>14</sup>

Not later than 30 days after publication in the Federal Register of a designation, an amended designation, or a determination in response to a petition for revocation, an organization designated as a foreign terrorist organization may seek judicial review of the designation in the Court of Appeals for the District of Columbia Circuit.<sup>15</sup> This venue limitation does not render the statute invalid.<sup>16</sup>

**Practice Tip:**

A standard of review like that used under the Administrative Procedure Act applies to findings under the Anti-Terrorism and Effective Death Penalty Act, as amended as part of the Intelligence Reform and Terrorist Prevention Act, by the Secretary of State that an organization designated as a foreign terrorist organization was foreign and that it engages in terrorism or terrorist activity or retains the capability and intent to do so.<sup>17</sup>



## CUMULATIVE SUPPLEMENT

### Cases:

Criteria used by Terrorist Screening Center (TSC) in determining whether to place individuals on No Fly List were not unconstitutionally vague under Due Process Clause as applied, even though they were based on threat assessment involving prediction of future criminal conduct, took lawful conduct into account, failed to specify threshold degree of risk, and were silent as to kinds of specific conduct that could lead to inclusion on No Fly List, where individuals in question had traveled to Somalia to fight jihad and to train for jihad, received weapons training at camp associated with foreign terrorist organization (FTO), fought with group that likely included members of al-Qaeda, and/or endorsed specially designated global terrorist's message. [U.S. Const. Amend. 5](#); [18 U.S.C.A. § 2331](#). [Kashem v. Barr](#), 941 F.3d 358 (9th Cir. 2019).

## [END OF SUPPLEMENT]

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### Footnotes

- 1 [8 U.S.C.A. § 1189\(a\)\(1\)](#).  
The government may use classified information, without disclosure, when making designation determinations for specially designated global terrorists under International Emergency Economic Powers Act (IEEPA). [Al Haramain Islamic Foundation, Inc. v. U.S. Dept. of The Treasury](#), 2011 WL 4424934 (9th Cir. 2011).
- 2 [National Council of Resistance of Iran v. Department of State](#), 251 F.3d 192, 178 A.L.R. Fed. 705 (D.C. Cir. 2001).
- 3 [Chai v. Department of State](#), 466 F.3d 125 (D.C. Cir. 2006).
- 4 [National Council of Resistance of Iran v. Department of State](#), 373 F.3d 152 (D.C. Cir. 2004).
- 5 [Chai v. Department of State](#), 466 F.3d 125 (D.C. Cir. 2006).
- 6 [8 U.S.C.A. § 1189\(a\)\(2\)\(A\)](#).
- 7 [8 U.S.C.A. § 1189\(a\)\(2\)\(C\)](#).
- 8 [8 U.S.C.A. § 1182\(a\)\(3\)\(B\)\(IV\), \(V\)](#).
- 9 [18 U.S.C.A. § 2339B\(a\)\(1\)](#), discussed in § 23.
- 10 [8 U.S.C.A. § 1189](#).
- 11 [Boim v. Quranic Literacy Inst. and Holy Land Foundation For Relief And Development](#), 291 F.3d 1000 (7th Cir. 2002); [U.S. v. Afshari](#), 426 F.3d 1150 (9th Cir. 2005); [Humanitarian Law Project v. Reno](#), 205 F.3d 1130 (9th Cir. 2000); [Chai v. Department of State](#), 466 F.3d 125 (D.C. Cir. 2006); [People's Mojahedin Organization of Iran v. Department of State](#), 327 F.3d 1238 (D.C. Cir. 2003).
- 12 [32 County Sovereignty Committee v. Department of State](#), 292 F.3d 797 (D.C. Cir. 2002); [People's Mojahedin Organization of Iran v. U.S. Dept. of State](#), 182 F.3d 17 (D.C. Cir. 1999).
- 13 [National Council of Resistance of Iran v. Department of State](#), 251 F.3d 192, 178 A.L.R. Fed. 705 (D.C. Cir. 2001).
- 14 [8 U.S.C.A. § 1189\(a\)\(8\)](#).
- 15 [8 U.S.C.A. § 1189\(c\)\(1\)](#).

- 16                    [U.S. v. Afshari, 426 F.3d 1150 \(9th Cir. 2005\)](#) (scheme avoided awkwardness of criminalizing support for a designated organization in some circuits but not others as varying decisions in different regional circuits could).
- 17                    [People's Mojahedin Organization of Iran v. U.S. Dept. of State, 613 F.3d 220 \(D.C. Cir. 2010\)](#).  
As to the Administrative Procedure Act, generally, see [Am. Jur. 2d, Administrative Law §§ 1 et seq.](#)

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## 74 Am. Jur. 2d Terrorism § 9

American Jurisprudence, Second Edition | May 2021 Update

### Terrorism


Marie K. Pesando, J.D.

#### I. In General

## § 9. Enemy combatants (unprivileged enemy belligerents) and military commissions

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Habeas Corpus](#)  662.1

West's Key Number Digest, [War and National Emergency](#)  1018, 1141 to 1144

### A.L.R. Library

[Constitutional Validity of Terrorism Prosecutions, Statutes, and Enemy Combatant Detention and Proceedings—Supreme Court Cases](#), 49 A.L.R. Fed. 2d 1

[Rights of Alien Detainees Held Outside the United States as to Their Treatment and Conditions of Detainment](#), 6 A.L.R. Fed. 2d 185

[Designation as Unlawful or Enemy Combatant](#), 185 A.L.R. Fed. 475

[Right of Enemy Combatant to Counsel](#), 184 A.L.R. Fed. 527

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[Beard, The Geneva Boomerang: The Military Commissions Act of 2006 and U.S. Counterterror Operations](#), 101 Am. J. Int'l L. 56 (2007)

[Bradley, The Military Commissions Act, Habeas Corpus, and the Geneva Conventions](#), 101 Am. J. Int'l L. 322 (2007)

[Cohen, Post-9/11 Anti-Terrorism Policy Regarding Noncitizens and the Constitutional Idea of Equal Protection Under the Laws](#), 88 Tex. L. Rev. 1323 (2010)

[Dehn, Why Article 5 Status Determinations are not Required at Guantanamo](#), 6 J. Int'l Crim. Just. 371 (2008)

[Delahunty, Yoo, What is the Role of International Human Rights Law in the War on Terror?](#), 59 DePaul L. Rev. 803 (2010)

[Glazier, A Self-Inflicted Wound: A Half-Dozen Years of Turmoil Over the Guantanamo Military Commissions](#), 12 Lewis & Clark L. Rev. 131 (2008)

Hakimi, [International Standards for Detaining Terrorism Suspects: Moving Beyond the Armed Conflict—Criminal Divide](#), 33 *Yale J. Int'l L.* 369 (2008)

Martin, [Judicial Review and the Military Commissions Act: On Striking the Right Balance](#), 101 *Am. J. Int'l L.* 344 (2007)

Martinez, [Process and Substance in the War on Terror](#), 108 *Colum. L. Rev.* 1013 (2008)

Menon, [Guantanamo Torture Litigation](#), 6 *J. Int'l Crim. Just.* 323 (2008)

Morse, [War Criminal or Just Plain Felon? Whether Providing Material Support for Terrorism Violates the Laws of War and is Thus Punishable By Military Commission](#), 26 *Ga. St. U. L. Rev.* 1061 (2010)

Vagts, [Military Commissions: A Concise History](#), 101 *Am. J. Int'l L.* 35 (2007)

Vanzant, [No Crime Without Law: War Crimes, Material Support for Terrorism, and the Ex Post Facto Principle](#), 59 *DePaul L. Rev.* 1053 (2010)

Vazquez, [The Military Commissions Act, the Geneva Conventions, and the Courts: A Critical Guide](#), 101 *Am. J. Int'l L.* 73 (2007)

In the wake of the September 11 terrorist attacks, Congress has authorized the President to use all necessary and appropriate force against those nations, organizations, or persons that he or she determines planned, authorized, committed, or aided the terrorist attacks or harbored such organizations or persons.<sup>1</sup> The Supreme Court has ruled that there is no bar to our nation's holding of one of its own citizens as an enemy combatant.<sup>2</sup> However, due process requires that a United States citizen being held as an enemy combatant be given a meaningful opportunity to contest the factual basis for his or her detention.<sup>3</sup> Moreover, federal habeas jurisdiction exists to hear challenges to the legality of the detentions of aliens who were captured abroad in connection with hostilities arising from the September 11 terrorist attacks and who are being held on a United States naval base in Cuba.<sup>4</sup>

**Observation:**

Absent a court order requiring the reading of such statements, no member of the Armed Forces and no official or employee of the Department of Defense or a component of the intelligence community (other than the Department of Justice) may read to a foreign national who is captured or detained outside the United States as an enemy belligerent and is in the custody or under the effective control of the Department of Defense or otherwise under detention in a Department of Defense facility *Miranda* warnings, or otherwise inform such an individual of any rights that the individual may or may not have to counsel or to remain silent consistent with *Miranda*.<sup>5</sup>

The President has been authorized to establish military commissions to try alien unprivileged enemy belligerents (formerly known as enemy combatants) engaged in hostilities against the United States for violations of the law of war and other offenses triable by military commission.<sup>6</sup>

**Definition:**

An "unprivileged enemy belligerent" means an individual who:<sup>7</sup>

- (1) has engaged in hostilities against the United States or its coalition partners;
- (2) has purposefully and materially supported hostilities against the United States or its coalition partners; or
- (3) was a part of al Qaeda at the time of the alleged offense.

A military commission has jurisdiction to try persons for any offense made punishable by the statute, certain provisions of the Uniform Code of Military Justice, or the law of war, whether such offense was committed before, on, or after September 11, 2001, and may, under such limitations as the President may prescribe, adjudge any punishment not forbidden by statute, including the penalty of death when specifically authorized.<sup>8</sup>

**Observation:**

No alien unprivileged enemy belligerent subject to trial by military commission may invoke the Geneva Conventions as a basis for a private right of action.<sup>9</sup>

Military commissions may be convened by the Secretary of Defense or by any officer or official of the United States designated by the Secretary for that purpose.<sup>10</sup>

Unless the accused waives his or her right to review, in each case in which the final decision of a military commission includes a finding of guilty, the convening authority shall refer the case to the United States Court of Military Commission Review.<sup>11</sup> The Court of Military Commission Review considers a defendant's challenges to the constitutionality of the Military Commissions Act of 2006 under a de novo standard of review.<sup>12</sup> Moreover, the Court reviews factual sufficiency de novo, applying a beyond a reasonable doubt standard of proof.<sup>13</sup> The Court may act only with respect to matters of law.<sup>14</sup> The United States Court of Appeals for the District of Columbia Circuit has exclusive jurisdiction to determine the validity of a final judgment rendered by a military commission,<sup>15</sup> and the Court of Appeals decision may be reviewed by the Supreme Court.<sup>16</sup>

The Military Commissions Act strips federal courts of their jurisdiction to hear or consider any other action, in addition to a habeas petition, relating to any aspect of transfer of an alien detainee who has been determined to have been properly detained

as an enemy combatant or is awaiting such determination but does not displace the courts' remedial authority, pursuant to the All Writs Act, to issue an auxiliary writ in aid of a jurisdiction already existing.<sup>17</sup>

**Practice Tip:**

No statement obtained by the use of torture or by cruel, inhuman, or degrading treatment, whether or not under color of law, shall be admissible in a military commission except against a person accused of torture or such treatment as evidence that the statement was made.<sup>18</sup>

## CUMULATIVE SUPPLEMENT

### Statutes:

[10 U.S.C.A. § 801](#), as added by the National Defense Authorization Act For Fiscal Year 2012, approved December 31, 2011, provides that Congress affirms that the authority of the President to use all necessary and appropriate force pursuant to the Authorization for Use of Military Force ([50 U.S.C.A. § 1541](#)) includes the authority for the Armed Forces of the United States to detain covered persons pending disposition under the law of war. Covered persons include a person who planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored those responsible for those attacks; persons also include one who was a part of or substantially supported al-Qaeda, the Taliban, or associated forces that are engaged in hostilities against the United States or its coalition partners, including any person who has committed a belligerent act or has directly supported such hostilities in aid of such enemy forces.

### Cases:

For American citizen to be subject to military transfer or detention as enemy combatant: (1) there must be legal authority for Executive to wage war against enemy, and (2) there must be opportunity for citizen to contest factual determination that he is enemy combatant fighting on behalf of that enemy. [Doe v. Mattis](#), 928 F.3d 1 (D.C. Cir. 2019).

Generally speaking, enemy soldiers or combatants are considered unlawful enemy combatants when they, for example, join or support an organization waging unlawful war or they commit specific "acts which render their belligerency unlawful." [Hamdan v. U.S.](#), 696 F.3d 1238 (D.C. Cir. 2012).

Preponderance of the evidence established that Yemeni national, who acknowledged that he stayed for two and a half months at an Islamic missionary organization that was a terrorist support entity "closely aligned" with terrorist organization and who had at least \$2,000 of unexplained cash on his person when arrested by the Iranian authorities, met the enemy-combatant criteria for detention, particularly in light of unreliable statements of fellow Guantanamo detainee. [Almerfedi v. Obama](#), 654 F.3d 1 (D.C. Cir. 2011).

When assessing whether Pakistani businessman rendered substantial support to Al Qaeda, the Taliban, or associated forces engaged in hostilities against United States or coalition partners warranting his detention at naval base at Guantanamo Bay, Cuba

under the Authorization for the Use of Military Force (AUMF), government was not required to establish any nexus between businessman and hostilities against the United States. 50 U.S.C.A. § 1541. *Paracha v. Trump*, 453 F. Supp. 3d 168 (D.D.C. 2020).

**[END OF SUPPLEMENT]**

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Footnotes

- 1 Pub. L. No. 107-40, 115 Stat. 224 (2001).
- 2 *Hamdi v. Rumsfeld*, 542 U.S. 507, 124 S. Ct. 2633, 159 L. Ed. 2d 578 (2004); *Padilla v. Yoo*, 633 F. Supp. 2d 1005 (N.D. Cal. 2009), as amended, (June 18, 2009).
- 3 *Hamdi v. Rumsfeld*, 542 U.S. 507, 124 S. Ct. 2633, 159 L. Ed. 2d 578 (2004).
- 4 *Rasul v. Bush*, 542 U.S. 466, 124 S. Ct. 2686, 159 L. Ed. 2d 548 (2004).
- 5 As to federal habeas jurisdiction, see *Am. Jur. 2d, Habeas Corpus and Postconviction Remedies* §§ 1 et seq. 10 U.S.C.A. § 801, note (Pub. L. No. 111-84, 123 Stat. 2454).
- 6 10 U.S.C.A. § 948b(a), (b).
- 7 As to the crimes triable by a military commission, see 10 U.S.C.A. § 950t.
- 8 10 U.S.C.A. § 948a(7).
- 9 10 U.S.C.A. § 948d.
- 10 As to the Uniform Code of Military Justice, see *Am. Jur. 2d, Military and Civil Defense* §§ 1 et seq.
- 11 10 U.S.C.A. § 948b(e).
- 12 10 U.S.C.A. § 948h.
- 13 10 U.S.C.A. § 950c(a).
- 14 *U.S. v. Hamdan*, 2011 WL 2923945 (U.S.C.M.C.R. 2011).
- 15 *U.S. v. Hamdan*, 2011 WL 2923945 (U.S.C.M.C.R. 2011).
- 16 *U.S. v. Khadr*, 717 F. Supp. 2d 1215 (U.S.C.M.C.R. 2007).
- 17 10 U.S.C.A. § 950g(a).
- 18 10 U.S.C.A. § 950g(e).
- 19 *Belbacha v. Bush*, 520 F.3d 452 (D.C. Cir. 2008).
- 20 As to the All Writs Act, generally, see *Am. Jur. 2d, Habeas Corpus and Postconviction Remedies* §§ 1 et seq.
- 21 10 U.S.C.A. § 948r(a).

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## 74 Am. Jur. 2d Terrorism § 10

American Jurisprudence, Second Edition | May 2021 Update

### Terrorism

Marie K. Pesando, J.D.

#### I. In General

## § 10. Authorization for use of military force

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [War and National Emergency](#)  1018

### A.L.R. Library

[Constitutional Validity of Terrorism Prosecutions, Statutes, and Enemy Combatant Detention and Proceedings—Supreme Court Cases](#), 49 A.L.R. Fed. 2d 1

[Construction and Application of Authorization for Use of Military Force \(AUMF\)](#), Pub. L. No. 107-40, 115 Stat. 224 ([Sept. 18, 2001](#)) (50 U.S.C.A. s1541 note), 16 A.L.R. Fed. 2d 333

Under the Authorization for Use of Military Force (AUMF), the President is authorized to use all necessary and appropriate force against those nations, organizations, or persons that he or she determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons.<sup>1</sup> The scope of the government's power to detain combatants under the AUMF is broad: the government may detain any individual engaged in hostilities against the United States who purposefully and materially supported hostilities against the United States or its coalition partners or who is part of Taliban, al Qaeda, or associated forces.<sup>2</sup> The government's claimed authority, pursuant to the AUMF and the law of war, to detain individuals who were "part of" Taliban, al Qaeda, or associated enemy forces does not extend to individuals who "substantially supported" enemy forces or those who "directly supported hostilities" in aid of enemy forces, but support for the Taliban, al Qaeda, or associated enemy forces will be considered in determining whether a detainee should be considered "part of" those forces.<sup>3</sup> For purposes of the government's detention authority under the AUMF extending to members of "associated forces" of organizations involved in the September 11 terrorist attacks against the United States, "associated forces" do not include terrorist organizations that merely share an abstract philosophy or even a common purpose with the targeted



organizations; there must be an actual association in the current conflict with al Qaeda or the Taliban.<sup>4</sup> Thus, the government's detention authority under the AUMF reaches those who are members of "associated forces" of organizations involved in the September 11 terrorist attacks against the United States so long as those forces would be considered cobelligerents under the law of war.<sup>5</sup>

Under the AUMF, the government's authority to detain an enemy combatant is not dependent on whether an individual would pose a threat to the United States or its allies if released.<sup>6</sup> Thus, the government may lawfully detain an individual who was part of the Taliban as long as the conflict continues even if that individual does not presently pose a threat to the national security of the United States.<sup>7</sup>

The "necessary and appropriate force" that the President is authorized to use under the AUMF includes the power to detain combatants subject to such force,<sup>8</sup> such as persons who are found to have been "part of" al Qaeda or Taliban forces.<sup>9</sup>

**Observation:**

Some deference is owed the executive branch in determining the scope of the President's detention authority pursuant to the AUMF.<sup>10</sup> However, the congressional determination to vest authority and discretion with the President in the designation of enemy combatants under the Authorization for Use of Military Force Joint Resolution does not bar judicial review of such designations.<sup>11</sup>

Being part of the Taliban, al Qaeda, or an associated force and, therefore, subject to detention by government under the AUMF requires some level of knowledge or intent.<sup>12</sup> The key question in the determination of whether an individual may be detained pursuant to the AUMF is whether the individual received and executed orders from the combat apparatus of the Taliban or al-Qaeda.<sup>13</sup> Thus, the person in question must have some sort of structured role in the hierarchy of the enemy force.<sup>14</sup> The determination of whether an individual is "part of" the Taliban, al Qaeda, or associated forces, as would justify his or her detention pursuant to the AUMF, is one that must be made on a case-by-case basis by using a functional rather than a formal approach<sup>15</sup> and by focusing upon the actions of the individual in relation to the organization.<sup>16</sup> Proof that an individual actually fought for or on behalf of al Qaeda or the Taliban, while sufficient, is not required to demonstrate that an individual is a "part of" such enemy forces as required to detain an individual under the AUMF.<sup>17</sup>

Demonstrating that someone is part of a terrorist organization's command structure is sufficient, but is not necessary, to show that the person is more likely than not part of the terrorist organization as required to detain a person for the duration of the war against the organization under the AUMF.<sup>18</sup> However, the purely independent conduct of a freelancer is not enough to establish that an individual is "part of" the al Qaeda terrorist organization.<sup>19</sup> Someone may properly be considered part of a terrorist organization and thus may be detained for the duration of the war against the organization under the AUMF even if he or she never formally received or executed any orders.<sup>20</sup> However, mere sympathy for or association with an enemy organization does not render an individual a member of that enemy organization for purposes of the government's detention authority under the AUMF.<sup>21</sup>

**Practice Tip:**

Whether a detainee was part of al Qaeda and, therefore, may be detained by the government pursuant to the AUMF is a mixed question of law and fact; that is, whether a detainee's alleged conduct justifies his or her detention under the AUMF is a legal question, and the question whether the government has proven that conduct is a factual question that is reviewed for clear error.<sup>22</sup>

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**Footnotes**

- 1 Pub. L. No. 107-40, 115 Stat. 224, codified at 50 U.S.C.A. § 1541, note.
- 2 Khan v. Obama, 741 F. Supp. 2d 1 (D.D.C. 2010), aff'd, 655 F.3d 20 (D.C. Cir. 2011).
- 3 Al Mutairi v. U.S., 644 F. Supp. 2d 78 (D.D.C. 2009); Mattan v. Obama, 618 F. Supp. 2d 24 (D.D.C. 2009).
- 4 Hamlily v. Obama, 616 F. Supp. 2d 63 (D.D.C. 2009), adopted, 653 F. Supp. 2d 62 (D.D.C. 2009).
- 5 Hamlily v. Obama, 616 F. Supp. 2d 63 (D.D.C. 2009), adopted, 653 F. Supp. 2d 62 (D.D.C. 2009).
- 6 Khairkhwa v. Obama, 2011 WL 2490960 (D.D.C. 2011); Alsabri v. Obama, 764 F. Supp. 2d 60, 84 Fed. R. Evid. Serv. 772 (D.D.C. 2011).
- 7 Naji al Warafi v. Obama, 704 F. Supp. 2d 32 (D.D.C. 2010), aff'd in part, remanded in part on other grounds, 409 Fed. Appx. 360 (D.C. Cir. 2011).
- 8 Khan v. Obama, 741 F. Supp. 2d 1 (D.D.C. 2010), aff'd, 655 F.3d 20 (D.C. Cir. 2011); Hamlily v. Obama, 616 F. Supp. 2d 63 (D.D.C. 2009), adopted, 653 F. Supp. 2d 62 (D.D.C. 2009).
- 9 Odah v. U.S., 611 F.3d 8 (D.C. Cir. 2010), cert. denied, 131 S. Ct. 1812, 179 L. Ed. 2d 772 (2011); Abdah v. Obama, 708 F. Supp. 2d 9 (D.D.C. 2010); Naji al Warafi v. Obama, 704 F. Supp. 2d 32 (D.D.C. 2010), aff'd in part, remanded in part on other grounds, 409 Fed. Appx. 360 (D.C. Cir. 2011); Mattan v. Obama, 618 F. Supp. 2d 24 (D.D.C. 2009).
- 10 Hamlily v. Obama, 616 F. Supp. 2d 63 (D.D.C. 2009), adopted, 653 F. Supp. 2d 62 (D.D.C. 2009).
- 11 Padilla v. Yoo, 633 F. Supp. 2d 1005 (N.D. Cal. 2009), as amended, (June 18, 2009).
- 12 Khan v. Obama, 741 F. Supp. 2d 1 (D.D.C. 2010), aff'd, 655 F.3d 20 (D.C. Cir. 2011); Al-Adahi v. Obama, 698 F. Supp. 2d 48 (D.D.C. 2010).
- 13 Abdah v. Obama, 708 F. Supp. 2d 9 (D.D.C. 2010).
- 14 Abdah v. Obama, 717 F. Supp. 2d 21 (D.D.C. 2010).
- 15 Khairkhwa v. Obama, 2011 WL 2490960 (D.D.C. 2011); Khan v. Obama, 741 F. Supp. 2d 1 (D.D.C. 2010), aff'd, 655 F.3d 20 (D.C. Cir. 2011); Sulayman v. Obama, 729 F. Supp. 2d 26 (D.D.C. 2010).  
Guantanamo Bay detainee's actions and recurrent entanglement with terrorist organization established that he more likely than not was part of organization as required to detain him for duration of war against organization under AUMF; detainee was captured in the vicinity of battleground between organization and United States; detainee, when captured, was part of a small group, including two members of organization who had since confessed to being bodyguards for terrorist leader, and another individual who fought against United States forces, detainee, with those three individuals, had attended religious school that was fertile recruiting ground for organization; detainee traveled to battleground along route also taken by organization members; detainee lied to hide the fact that someone else paid for his travel; detainee was seen at organization's guesthouse; and detainee's explanation that he was innocently going about his business

and just happened to show up in a variety of extraordinary places involved a host of unlikely coincidences. [Uthman v. Obama](#), 637 F.3d 400 (D.C. Cir. 2011), petition for cert. filed (U.S. Aug. 29, 2011).

Yemeni citizen taken into custody in Afghanistan and held at naval base detention facility in Guantanamo Bay, Cuba, more likely than not was part of al Qaeda at time of his capture, as required to justify his detention pursuant to AUMF, where he had received weapons training at al Qaeda training camp for at least one month; he took religious studies course at institute sponsored by Al Qaeda; he passed through Tora Bora in December of 2001, and he was with two other men, both of whom had participated in fighting, when he was taken into Afghan custody; and his explanation was not credible. [Esmail v. Obama](#), 639 F.3d 1075 (D.C. Cir. 2011).

Alien, who had traveled to Afghanistan prior to September 11 terrorist attacks against United States, made conscious choice to ally himself with terrorist organization, rather than extricate himself from country after attacks, and thus was "part of" organization and subject to detention as enemy combatant pursuant to AUMF; alien traveled to Afghanistan on series of one-way plane tickets purchased with cash in manner consistent with travel patterns of those going to Afghanistan to join Taliban and organization, sought out and met with terrorist official upon arriving in Afghanistan, obtained rifle from organization, surrendered passport and other possessions to official, accepted directions from terrorist official, stayed with several individuals over several months, then went on march through Tora Bora region for 10 days with 150 men, some of whom, including alien, were armed, and march was attacked by United States and allied warplanes. [Odah v. U.S.](#), 611 F.3d 8 (D.C. Cir. 2010), cert. denied, 131 S. Ct. 1812, 179 L. Ed. 2d 772 (2011).

16 [Uthman v. Obama](#), 637 F.3d 400 (D.C. Cir. 2011), petition for cert. filed (U.S. Aug. 29, 2011); [Salahi v. Obama](#), 625 F.3d 745 (D.C. Cir. 2010); [Bensayah v. Obama](#), 610 F.3d 718 (D.C. Cir. 2010); [Khairkhwa v. Obama](#), 2011 WL 2490960 (D.D.C. 2011); [Khan v. Obama](#), 741 F. Supp. 2d 1 (D.D.C. 2010), aff'd, 655 F.3d 20 (D.C. Cir. 2011).

17 [Kandari v. U.S.](#), 744 F. Supp. 2d 11 (D.D.C. 2010); [Hamlily v. Obama](#), 616 F. Supp. 2d 63 (D.D.C. 2009), adopted, 653 F. Supp. 2d 62 (D.D.C. 2009).

18 [Uthman v. Obama](#), 637 F.3d 400 (D.C. Cir. 2011), petition for cert. filed (U.S. Aug. 29, 2011); [Salahi v. Obama](#), 625 F.3d 745 (D.C. Cir. 2010); [Khairkhwa v. Obama](#), 2011 WL 2490960 (D.D.C. 2011); [Sulayman v. Obama](#), 729 F. Supp. 2d 26 (D.D.C. 2010).

19 [Salahi v. Obama](#), 625 F.3d 745 (D.C. Cir. 2010); [Bensayah v. Obama](#), 610 F.3d 718 (D.C. Cir. 2010); [Khairkhwa v. Obama](#), 2011 WL 2490960 (D.D.C. 2011); [Sulayman v. Obama](#), 729 F. Supp. 2d 26 (D.D.C. 2010).

20 [Uthman v. Obama](#), 637 F.3d 400 (D.C. Cir. 2011), petition for cert. filed (U.S. Aug. 29, 2011).

21 [Hamlily v. Obama](#), 616 F. Supp. 2d 63 (D.D.C. 2009), adopted, 653 F. Supp. 2d 62 (D.D.C. 2009).

22 [Bensayah v. Obama](#), 610 F.3d 718 (D.C. Cir. 2010).

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## 74 Am. Jur. 2d Terrorism § 11

American Jurisprudence, Second Edition | May 2021 Update

### Terrorism

Marie K. Pesando, J.D.

### I. In General

## § 11. Terrorism Risk Insurance Act

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, Attachment [✂](#)2, 25, 49, 50, 64

West's Key Number Digest, Execution [✂](#)20 to 22, 55

West's Key Number Digest, [International Law](#) [✂](#)10.19, 10.30, 10.35

West's Key Number Digest, [War and National Emergency](#) [✂](#)1123, 1132(1)

### A.L.R. Library

Construction and Application of s 201 of Terrorism Risk Insurance Act of 2002, [Public Law 107-297](#), sec. 201, 116 Stat. 2337, 190 A.L.R. Fed. 155

### Trial Strategy

[Proof of Coverage or Exclusion of Alleged Act of Terrorism Under Commercial Property Insurance, 74 Am. Jur. Proof of Facts 3d 233](#)

In the wake of the terrorist attacks of September 11, 2001, Congress enacted the Terrorism Risk Insurance Act (TRIA).<sup>1</sup> The Act establishes a terrorism insurance program<sup>2</sup> and provides for the treatment of terrorist assets.<sup>3</sup> Thus, in every case in which a person has obtained a judgment against a terrorist party on a claim based upon an act of terrorism, or for which a terrorist party is not immune, the blocked assets of that terrorist party (including the blocked assets of any agency or instrumentality of that

terrorist party) shall be subject to execution or attachment in aid of execution in order to satisfy such judgment to the extent of any compensatory damages for which such terrorist party has been adjudged liable.<sup>4</sup>

TRIA provides courts with subject-matter jurisdiction over postjudgment execution and attachment proceedings against property held in the hands of an instrumentality of the judgment-debtor even if the instrumentality is not itself named in the judgment.<sup>5</sup> The Act preempts treaties<sup>6</sup> and state property law.<sup>7</sup>

**Observation:**

TRIA did not provide an exception to Cuban Assets Control Regulations' prohibition on enforcement of a judgment creditor's writ of attachment against Cuban assets where the underlying claim against the Republic of Cuba was not based on an "act of terrorism" under TRIA because the torture experienced by the judgment creditor in Cuba while a Cuban citizen did not result in damage within the United States, was not committed to coerce the United States population or influence United States policy, and was not a terrorist activity such as hijacking, hostage taking, or assassination.<sup>8</sup>

Under TRIA, property of a foreign central bank of a terrorist party is not immune from attachment and execution to satisfy a judgment obtained against the terrorist party pursuant to the Foreign Sovereign Immunities Act.<sup>9</sup>

**Observation:**

Under TRIA, a person holding a judgment against Iran based on a claim of an act of terrorism may be entitled to the property in satisfaction of that judgment, notwithstanding the absence of any contest between the actual holder and Iran.<sup>10</sup>

## CUMULATIVE SUPPLEMENT

**Cases:**

Both the Terrorism Risk Insurance Act (TRIA) and the Iran Threat Reduction and Syria Human Rights Act of 2012 permit execution only to the extent of any compensatory damages. [28 U.S.C.A. § 1610](#) note; Iran Threat Reduction and Syria Human Rights Act of 2012, § 502(a–d), [22 U.S.C.A. § 8772](#). [Bank Markazi v. Peterson](#), 136 S. Ct. 1310 (2016).

That section of the Foreign Sovereign Immunities Act (FSIA) which makes available for execution the property, whether or not blocked, of a foreign state sponsor of terrorism, or its agency or instrumentality, to satisfy a judgment against that state,

does not take precedence over "any other provision of law," as the Terrorism Risk Insurance Act (TRIA) does. [28 U.S.C.A. §§ 1610\(g\), 1610 note](#). [Bank Markazi v. Peterson](#), 136 S. Ct. 1310 (2016).

For purposes of the Terrorism Risk Insurance Act (TRIA), which authorizes execution of judgments obtained under the Foreign Sovereign Immunities Act's (FSIA) terrorism exception against specified blocked assets, a "blocked asset" is any asset seized by the Executive Branch pursuant to either the Trading with the Enemy Act (TWEA) or the International Emergency Economic Powers Act (IEEPA). [28 U.S.C.A. §§ 1605A\(a\)\(1\), 1610 note](#); [50 App.U.S.C.A. § 1 et seq.](#); [28 U.S.C.A. § 1701 et seq.](#) [Bank Markazi v. Peterson](#), 136 S. Ct. 1310 (2016).

Under Terrorism Risk Insurance Act (TRIA), \$6.7 million that government sought in civil forfeiture action were subject to execution or attachment in aid of execution in order to satisfy judgment, in underlying suit against Al Qaeda terrorist organization, in favor of insurance companies that paid insureds' property damage claims arising from September 11, 2001 terrorist attacks, to extent of any compensatory damages for which Al Qaeda was adjudged liable; funds were frozen by government, and thus were "blocked," and, although companies did not initiate separate suit to register judgment against Al Qaeda or file subsequent citation to discover funds, they sought to participate in forfeiture action by filing verified claims to funds and answering government's complaint. [18 U.S.C.A. § 981](#); Terrorism Risk Insurance Act of 2002, 116 Stat. 2322, 2337, codified at [28 U.S.C. § 1610 note](#). [United States v. All Funds on Deposit with R.J. O'Brien & Associates](#), 982 F. Supp. 2d 830 (N.D. Ill. 2013).

## [END OF SUPPLEMENT]

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### Footnotes

- 1 [Pub. L. No. 107-297, 116 Stat. 2322 \(2002\)](#) [set out as a note under [15 U.S.C.A. § 6701](#)].
- 2 [Pub. L. No. 107-297 §§ 101 to 108, 116 Stat. 2322 \(2002\)](#) [set out as a note under [15 U.S.C.A. § 6701](#)], discussed in [§ 12](#).
- 3 [Pub. L. No. 107-297, § 201, 116 Stat. 2322 \(2002\)](#) [set out as a note under [28 U.S.C.A. § 1610](#)].
- 4 [Pub. L. No. 107-297, § 201\(a\), 116 Stat. 2322 \(2002\)](#) [set out as a note under [28 U.S.C.A. § 1610](#)].  
Antiquities that were the property of Iran and in possession of American university and several of its museums qualified as "blocked assets" within the meaning of TRIA and were therefore subject to attachment by trustee process by survivors of terrorist attack who had obtained \$109 million default judgment against Iran; survivors' claim, as judgment creditors, that the antiquities belonged to Iran was sufficient to make their ownership contested, and university and museums could not rely on their own failure to obtain a written opinion that Iran did not have title or only had partial title to the antiquities as a basis for asserting that Iran's interest was therefore uncontested so that they could keep the property exempt from levy. [Rubin v. Islamic Republic of Iran](#), 541 F. Supp. 2d 416, 231 Ed. Law Rep. 733 (D. Mass. 2008).  
Arbitral award against American military supplier, in favor of Iran, was not a "blocked asset" under TRIA, as would make award immune from attachment by private citizen who had obtained judgment against Iran, based on its involvement in assassination of his brother since Iran's interest in award arose after Treasury Department order authorizing transactions involving property in which Iran had interest; if Iran's interest was in the arbitral award itself that arose more than 17 years after the Treasury Department order, and if Iran's interest was in the proceeds of the sale that was the subject of the arbitral award that occurred more than a year after the Treasury Department order. [Ministry of Defense and Support for the Armed Forces of the Islamic Republic of Iran v. Elahi](#), 556 U.S. 366, 129 S. Ct. 1732, 173 L. Ed. 2d 511 (2009).  
Cuba, which was designated by the State Department as a state sponsor of terrorism under the Export Administration Act, was a "terrorist party" within meaning of TRIA. [Weininger v. Castro](#), 462 F. Supp. 2d 457 (S.D. N.Y. 2006).
- 5 [Weinstein v. Islamic Republic of Iran](#), 609 F.3d 43 (2d Cir. 2010), petition for cert. filed, 79 U.S.L.W. 3442, 80 U.S.L.W. 3015 (U.S. Jan. 18, 2011).

- 6                    [Weinstein v. Islamic Republic of Iran](#), 624 F. Supp. 2d 272 (E.D. N.Y. 2009), decision aff'd, 609 F.3d 43 (2d Cir. 2010), petition for cert. filed, 79 U.S.L.W. 3442, 80 U.S.L.W. 3015 (U.S. Jan. 18, 2011) (Treaty of Amity between United States and Iran).
- 7                    [Hausler v. JP Morgan Chase Bank, N.A.](#), 740 F. Supp. 2d 525 (S.D. N.Y. 2010).
- 8                    [Jerez v. Republic of Cuba](#), 777 F. Supp. 2d 6 (D.D.C. 2011).
- 9                    [Weininger v. Castro](#), 462 F. Supp. 2d 457 (S.D. N.Y. 2006).
- As to the Foreign Sovereign Immunities Act, see [Am. Jur. 2d, International Law §§ 93 to 179](#).
- 10                  [Rubin v. Islamic Republic of Iran](#), 541 F. Supp. 2d 416, 231 Ed. Law Rep. 733 (D. Mass. 2008).

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## 74 Am. Jur. 2d Terrorism § 12

American Jurisprudence, Second Edition | May 2021 Update

### Terrorism


Marie K. Pesando, J.D.

#### I. In General

## § 12. Terrorism Risk Insurance Act—Terrorism insurance

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Insurance](#)  1008, 1021

West's Key Number Digest, [War and National Emergency](#)  1129

The purpose of the terrorism insurance program created by the Terrorism Risk Insurance Act is to establish a temporary federal program that provides for a transparent system of shared public and private compensation for insured losses resulting from acts of terrorism in order to:<sup>1</sup>

- (1) protect consumers by addressing market disruptions and ensure the continued widespread availability and affordability of property and casualty insurance for terrorism risk; and
- (2) allow for a transitional period for the private markets to stabilize, resume pricing of such insurance, and build capacity to absorb any future losses while preserving state insurance regulation and consumer protections.

### Definition:

An act of terrorism, for purposes of the Act, means any act that is certified by the Secretary of the Treasury in concurrence with the Secretary of State and the Attorney General of the United States:<sup>2</sup>

- (1) to be an act of terrorism;
- (2) to be a violent act or an act that is dangerous to human life, property, or infrastructure;



(3) to have resulted in damage within the United States or outside of the United States in the case of an air carrier or vessel or the premises of a United States mission; and

(4) to have been committed by an individual or individuals, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States government by coercion.

No act will be certified by the Secretary of the Treasury as an act of terrorism if the act is committed as part of the course of a war declared by the Congress or property and casualty losses resulting from the act, in the aggregate, do not exceed a specified amount.<sup>3</sup> Any certification of, or determination not to certify, an act as an act of terrorism is final and is not subject to judicial review.<sup>4</sup> The Secretary of the Treasury has the power to investigate and audit all claims under the program, to prescribe regulations and procedures to effectively administer and implement the program, and to ensure that all insurers and self-insured entities that participate in the program are treated comparably under the program.<sup>5</sup>

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#### Footnotes

1 [Pub. L. No. 107-297, § 101, 116 Stat. 2322 \(2002\)](#) [set out as a note under [15 U.S.C.A. § 6701](#)].

2 [Pub. L. No. 107-297, § 102\(1\)\(A\), 116 Stat. 2322 \(2002\)](#) [set out as a note under [15 U.S.C.A. § 6701](#)].

3 [Pub. L. No. 107-297, § 102\(1\)\(B\), 116 Stat. 2322 \(2002\)](#) [set out as a note under [15 U.S.C.A. § 6701](#)].

4 [Pub. L. No. 107-297, § 102\(1\)\(C\), 116 Stat. 2322 \(2002\)](#) [set out as a note under [15 U.S.C.A. § 6701](#)].

5 [Pub. L. No. 107-297, § 104, 116 Stat. 2322 \(2002\)](#) [set out as a note under [15 U.S.C.A. § 6701](#)].

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## 74 Am. Jur. 2d Terrorism II Refs.

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### Terrorism





Marie K. Pesando, J.D.

### II. Civil Actions and Liability





[Topic Summary](#) | [Correlation Table](#)

## Research References

### West's Key Number Digest

West's Key Number Digest, Attachment  2, 25, 49, 50, 64  
West's Key Number Digest, Execution  20 to 22, 55  
West's Key Number Digest, [International Law](#)  10.19, 10.30, 10.35  
West's Key Number Digest, [War and National Emergency](#)  1132(1), 1132(2)

### A.L.R. Library

A.L.R. Index, Terrorism  
West's A.L.R. Digest, Attachment  2, 25, 49, 50, 64  
West's A.L.R. Digest, Execution  20 to 22, 55  
West's A.L.R. Digest, [International Law](#)  10.19, 10.30, 10.35  
West's A.L.R. Digest, [War and National Emergency](#)  1132(1), 1132(2)

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## 74 Am. Jur. 2d Terrorism § 13

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### Terrorism

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### II. Civil Actions and Liability

## § 13. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [War and National Emergency](#)  1132(1), 1132(2)

### A.L.R. Library

[Validity, Construction, and Application of 18 U.S.C.A. sec. 2333\(a\), Which Allows U.S. Nationals Who Have Been Injured "By Reason of Act of International Terrorism" to Sue Therefor and Recover Treble Damages, 195 A.L.R. Fed. 217](#)

Any national of the United States injured in his or her person, property, or business by reason of an act of international terrorism, or his or her estate, survivors, or heirs, may sue therefor in any appropriate district court of the United States and will recover threefold the damages that he or she sustains and the cost of the suit, including attorney's fees.<sup>1</sup>

### Practice Tip:

For purposes of the statute providing civil remedies for terrorism victims, it is not necessary that plaintiffs specifically use the terms "heirs" or "survivors" in alleging their relationship to United States nationals; rather, it is sufficient for plaintiffs to allege a familial relationship, such as that of child, parent, spouse, or sibling of a United States national.<sup>2</sup>

Because the statute provides for the automatic trebling of damages, courts require proof of intentional misconduct on the part of the tortfeasor.<sup>3</sup> Proceeding in the same manner after being notified of a risk will constitute intentional misconduct for purposes of a claim for treble damages under the statute where the defendant knows that the consequences are certain, or substantially certain, to result from his or her act; if the defendant proceeds with the action in spite of the risk, he or she is treated by the law as if he or she had in fact desired to produce the result.<sup>4</sup>

Victims of the September 11, 2001, terrorist attacks have been permitted to recover damages under this statute.<sup>5</sup>

The statute does not prohibit mere association with a foreign terrorist organization, nor is it intended to abridge First Amendment rights.<sup>6</sup>

While a donation to a terrorist group that targets Americans outside of the United States is within the scope of the statute,<sup>7</sup> in order to be liable under the statute, a donor to a terrorist organization must have known that the organization engages in such acts or have been deliberately indifferent, i.e., reckless, to whether it does or not.<sup>8</sup> Thus, to be civilly liable, a defendant must either know that the recipient of the material support provided by him or her is an organization that engages in terrorist acts, or the defendant must be deliberately indifferent to whether or not the organization does so, meaning that the defendant knows that there is a substantial probability that the organization engages in terrorism but does not care.<sup>9</sup> To state a claim, plaintiffs must plead sufficient factual allegations to show that the defendant knew, or had reason to believe, that intermediate entities or persons would transfer to or expend the financial or other material support provided by defendant on behalf of, or at the direction of, a terrorist organization.<sup>10</sup> Where the allegations pleaded in support of the causation element of a civil claim under the Anti-Terrorism Act demonstrate that there is a temporal proximity between the material support provided by the defendant to a terrorist organization and the terrorist act that caused the plaintiffs' injuries, it may be reasonable to infer that the recently provided material support made it more likely that the terrorist act would occur, but where there is a remoteness in time, there must be sufficient factual allegations of a connection between the material support provided and the acts of terrorism that caused the plaintiffs' injuries such that a reasonable trier of fact could conclude that it was more likely than not that the support provided by the defendant assisted the terrorists in the commission of the terrorist act.<sup>11</sup>

Proximate cause will support a causal connection between international terrorism and injuries sustained by plaintiffs seeking to recover under the Anti-Terrorism Act; but-for causation is not required.<sup>12</sup>

**Practice Tip:**

For plaintiffs to plead the causation element of a claim against terrorist financiers under the Anti-Terrorism Act, there must be a causal connection between the defendant's provision of material support to a terrorist organization and the plaintiffs' injuries even though there need not be a direct relationship; thus, for pleading purposes, the plaintiffs are not required to plead factual allegations to demonstrate that the alleged material support provided by the defendant was the proximate cause of the plaintiffs' claimed injuries.<sup>13</sup>

The scope of the statute is not limited to physical injuries, and it extends to United States nationals suing for such things as emotional distress<sup>14</sup> and loss of consortium in connection with acts perpetrated against their family members who were not United States nationals.<sup>15</sup> The statute permits claims by United States citizens for their nonphysical injuries that result from a terrorist attack on their family member if the attack victim is a United States citizen who survives the attack.<sup>16</sup>

Violations of the statutes barring the provision of material support or resources to a terrorist or a terrorist organization<sup>17</sup> give rise to civil liability for damages.<sup>18</sup> However, violations of the Anti-Terrorism Act (ATA) provision requiring a financial institution to retain and report any funds under its control in which it knows that a foreign terrorist organization has an interest do not, in and of themselves, constitute material support for foreign terrorist organizations in violation of the ATA.<sup>19</sup> Although the materiality requirement of the statute is fulfilled by "routine" banking services, such as opening and maintaining bank accounts, collecting funds, transmitting funds, and providing merchant account credit card services,<sup>20</sup> a bank cannot be held liable for the injuries sustained due to an act of terrorism simply because the monies that funded the violent act passed through the bank itself, or one of its correspondent banking accounts, during the performance of routine banking services.<sup>21</sup>

The act of giving money is an "act of international terrorism," pursuant to the Anti-Terrorism Act.<sup>22</sup> However, establishing meeting places, holding public forums, or issuing publications to disseminate virulent rhetoric is not actionable unless such services are being provided as support to a foreign terrorist organization.<sup>23</sup>

**Caution:**

There is a split of authority over whether the statute<sup>24</sup> imposes secondary liability, e.g., aiding and abetting, with some courts holding that it does not<sup>25</sup> but with other courts holding that it does.<sup>26</sup> Where only primary liability is available, courts have stated that the ordinary tort requirements relating to fault, state of mind, causation, and foreseeability must be satisfied.<sup>27</sup> If the defendant's liability is secondary, proximate cause is required as a matter of ordinary tort law.<sup>28</sup> Assuming that a defendant in a private action brought under the Anti-Terrorism Act can be held liable on an aiding-and-abetting theory, such a theory requires adequate allegations that the defendant not only knew that its funds would be used to sponsor terrorist acts but also intended to do so, and aiding and abetting under customary international law requires the same knowledge and intent.<sup>29</sup>

No action for damages may be maintained against the United States, or an agency or officer thereof, acting within his or her official capacity or under color of legal authority.<sup>30</sup> Moreover, no action for damages may be maintained against a foreign state, or an agency or officer thereof, acting within his or her official capacity or under color of legal authority.<sup>31</sup> In addition, no action for damages may be maintained for injury or loss by reason of an act of war.<sup>32</sup>

Federal district courts have exclusive jurisdiction over damages actions for terrorist acts.<sup>33</sup> Such actions must be commenced within four years after the date when the cause of action accrued.<sup>34</sup> The time of the absence of the defendant from the United States or from any jurisdiction in which the same or a similar action could be brought by the plaintiff, or of any concealment

of the defendant's whereabouts, is excluded from the four-year period.<sup>35</sup> Congress did not by clear implication create a right of contribution under the Anti-Terrorism Act.<sup>36</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

An aiding and abetting theory of liability is not available under the Antiterrorism Act (ATA). 18 U.S.C.A. §§ 2339A, 2339B, 2339C. *Abecassis v. Wyatt*, 7 F. Supp. 3d 668 (S.D. Tex. 2014).

Detention policy claims, challenging confinement conditions imposed on aliens detained for immigration violations pursuant to a high-level executive policy created in the wake of a major terrorist attack on American soil, arose in a new *Bivens* context, requiring a special factors analysis before allowing their damages suit against federal executive officials to proceed. *Ziglar v. Abbasi*, 2017 WL 2621317 (U.S. 2017).

Under special factors analysis, whether to permit damages claims challenging confinement conditions imposed on aliens detained for immigration violations pursuant to a high-level executive policy created in the wake of the September 11, 2001 terrorist attacks was decision for Congress, not the courts, and thus such claims could not be basis for *Bivens* action against federal executive officials; allowing a damages suit would require courts to interfere with sensitive functions of the Executive Branch and require inquiry into sensitive issues of national security, and alternative methods of relief, including habeas corpus, were available. *Ziglar v. Abbasi*, 2017 WL 2621317 (U.S. 2017).

Family member, whose husband and son were intentionally struck and killed by truck, responsibility for which was claimed by foreign terrorist organization, failed to allege proximate cause between organization's use of social media providers' platforms and husband's and son's deaths, as required to state claim against providers for direct liability under Antiterrorism Act (ATA); family member did not allege that organization communicated to driver or that driver expressed connection to organization prior to attack, none of organization's materials that were viewed by driver were allegedly seen or hosted on providers' platforms, allegation that accomplice sent driver a message through platform to encourage attack was not an alleged communication from organization to driver, and there was no evidence that provider both knew of that message and failed to act on it. 18 U.S.C.A. § 2333(a). *Copeland v. Twitter, Inc.*, 352 F. Supp. 3d 965 (N.D. Cal. 2018).

Anti-Terrorism Act (ATA) claims generally ask a court to interpret and apply a federal statute to a defendant's private conduct. 18 U.S.C.A. § 2333(a). *Atchley v. AstraZeneca UK Limited*, 474 F. Supp. 3d 194 (D.D.C. 2020).

Victims and families of victims of drug cartels failed to plausibly allege that subsidiaries of foreign investment bank laundered cartel's money with the intent to intimidate civilians or influence a government, for purposes of their private claim against subsidiaries under the Anti-Terrorism Act (ATA), although it was possible that subsidiaries' did launder with the intent, where, to an objective observer, subsidiaries' conduct appeared to be motivated by economics and greed rather than by the desire to intimate or coerce. 18 U.S.C.A. § 2331(1). *Zapata v. HSBC Holdings PLC*, 414 F. Supp. 3d 342 (E.D. N.Y. 2019).

Whereas a plaintiff's burden in all cases to allege traceability is relatively modest, Anti-Terrorism Act (ATA) plaintiffs are held to a higher standard to show causation, and must plausibly allege that a defendant's conduct was a proximate cause of their injury. 18 U.S.C.A. § 2333(a). *Freeman v. HSBC Holdings PLC*, 413 F. Supp. 3d 67 (E.D. N.Y. 2019).

## [END OF SUPPLEMENT]

Footnotes

- 1 18 U.S.C.A. § 2333.  
Anti-Terrorism Act (ATA) bestows subject-matter jurisdiction upon the federal courts regardless of whether the victims were specifically targeted because of their United States citizenship. *Sokolow v. Palestine Liberation Organization*, 583 F. Supp. 2d 451 (S.D. N.Y. 2008).  
The commission of activities that would be violative of the Anti-Terrorism Act (ATA) criminal statutes are deemed to constitute acts of terrorism that can be civilly redressed under ATA. *In re Terrorists Attacks on September 11, 2001*, 740 F. Supp. 2d 494 (S.D. N.Y. 2010).  
Purported failure of bank to comply with reporting requirements of Anti-Terrorism Act (ATA), pertaining to alleged transfers of funds to and from agents of terrorist organization, did not give rise to criminal liability and thus was not actionable under ATA; private right of action arose from injuries caused by act of "international terrorism" rather than reporting obligations and imposition of civil penalties was within discretion of Attorney General. *Linde v. Arab Bank, PLC*, 353 F. Supp. 2d 327 (E.D. N.Y. 2004).  
Although the statutory trebling provision of the Anti-Terrorism Act (ATA) applies to any award of damages against individuals who acted on behalf of a foreign State, such trebled damages cannot be pursued against the State itself. *Pugh v. Socialist People's Libyan Arab Jamahiriya*, 530 F. Supp. 2d 216 (D.D.C. 2008).
- 2 *Weiss v. National Westminster Bank PLC*, 453 F. Supp. 2d 609 (E.D. N.Y. 2006).
- 3 *Wultz v. Islamic Republic of Iran*, 755 F. Supp. 2d 1 (D.D.C. 2010).
- 4 *Wultz v. Islamic Republic of Iran*, 755 F. Supp. 2d 1 (D.D.C. 2010).
- 5 *Smith ex rel. Smith v. Islamic Emirate of Afghanistan*, 262 F. Supp. 2d 217, 62 Fed. R. Evid. Serv. 106 (S.D. N.Y. 2003), order amended on other grounds, 2003 WL 23324214 (S.D. N.Y. 2003).
- 6 *In re Terrorists Attacks on September 11, 2001*, 740 F. Supp. 2d 494 (S.D. N.Y. 2010).
- 7 *Boim v. Holy Land Foundation for Relief and Development*, 549 F.3d 685 (7th Cir. 2008), cert. denied, 130 S. Ct. 458, 175 L. Ed. 2d 324 (2009).
- 8 *Boim v. Holy Land Foundation for Relief and Development*, 549 F.3d 685 (7th Cir. 2008), cert. denied, 130 S. Ct. 458, 175 L. Ed. 2d 324 (2009).
- 9 *In re Terrorists Attacks on September 11, 2001*, 740 F. Supp. 2d 494 (S.D. N.Y. 2010).
- 10 *In re Terrorists Attacks on September 11, 2001*, 740 F. Supp. 2d 494 (S.D. N.Y. 2010).
- 11 *In re Terrorists Attacks on September 11, 2001*, 740 F. Supp. 2d 494 (S.D. N.Y. 2010).
- 12 *In re Chiquita Brands Intern., Inc. Alien Tort Statute and Shareholder Derivative Litigation*, 690 F. Supp. 2d 1296 (S.D. Fla. 2010).
- 13 *In re Terrorists Attacks on September 11, 2001*, 740 F. Supp. 2d 494 (S.D. N.Y. 2010).
- 14 *Goldberg v. UBS AG*, 660 F. Supp. 2d 410 (E.D. N.Y. 2009).
- 15 *Linde v. Arab Bank, PLC*, 384 F. Supp. 2d 571 (E.D. N.Y. 2005).
- 16 *Morris v. Khadr*, 415 F. Supp. 2d 1323 (D. Utah 2006).
- 17 18 U.S.C.A. §§ 2339A, 2339B, discussed in §§ 22, 23.
- 18 *Boim v. Quranic Literacy Inst. and Holy Land Foundation For Relief And Development*, 291 F.3d 1000 (7th Cir. 2002).
- 19 *Linde v. Arab Bank, PLC*, 384 F. Supp. 2d 571 (E.D. N.Y. 2005).
- 20 *Weiss v. National Westminster Bank PLC*, 453 F. Supp. 2d 609 (E.D. N.Y. 2006).
- 21 *In re Terrorists Attacks on September 11, 2001*, 740 F. Supp. 2d 494 (S.D. N.Y. 2010).
- 22 *Abecassis v. Wyatt*, 704 F. Supp. 2d 623 (S.D. Tex. 2010).
- 23 *In re Terrorists Attacks on September 11, 2001*, 740 F. Supp. 2d 494 (S.D. N.Y. 2010).
- 24 18 U.S.C.A. § 2333.
- 25 *Boim v. Holy Land Foundation for Relief and Development*, 549 F.3d 685 (7th Cir. 2008), cert. denied, 130 S. Ct. 458, 175 L. Ed. 2d 324 (2009); *In re Terrorists Attacks on September 11, 2001*, 740 F. Supp. 2d 494 (S.D. N.Y. 2010).
- 26 *Wultz v. Islamic Republic of Iran*, 755 F. Supp. 2d 1 (D.D.C. 2010) (by expressly creating a private right of action under ATA, Congress intended to incorporate common principles of tort law and to refuse to recognize aiding-and-abetting liability would stymie Congress's intent); *Almog v. Arab Bank, PLC*, 471 F. Supp. 2d

257 (E.D. N.Y. 2007); *Linde v. Arab Bank, PLC*, 384 F. Supp. 2d 571 (E.D. N.Y. 2005); *Morris v. Khadr*, 415 F. Supp. 2d 1323 (D. Utah 2006).

27 *In re Terrorists Attacks on September 11, 2001*, 740 F. Supp. 2d 494 (S.D. N.Y. 2010).

28 *Abecassis v. Wyatt*, 785 F. Supp. 2d 614 (S.D. Tex. 2011).

29 *Rothstein v. UBS AG*, 647 F. Supp. 2d 292 (S.D. N.Y. 2009), adhered to, 772 F. Supp. 2d 511 (S.D. N.Y. 2011).

30 18 U.S.C.A. § 2337(1).

31 18 U.S.C.A. § 2337(2).

Claims brought against the Libyan State, its intelligence service, and individual defendants in their official capacities by the corporate owner of an airline allegedly bombed by agents of the Libyan State, under statute providing for civil remedies for a U.S. national injured in his property or business as a result of international terrorism, were precluded by statute prohibiting such claims against a foreign state or its agencies or employees. *Pugh v. Socialist People's Libyan Arab Jamahiriya*, 290 F. Supp. 2d 54 (D.D.C. 2003).

Palestinian Interim Self-Government Authority (PA) was not a sovereign state entitled to immunity in action, under Anti-Terrorism Act (ATA), based on the death of plaintiffs' decedent in a terrorist shooting in Israel; two agreements between Israel and the PA clearly indicated that the PA lacked the capacity to conduct foreign relations. *Gilmore v. The Palestinian Interim Self-Government Authority*, 422 F. Supp. 2d 96 (D.D.C. 2006).

32 18 U.S.C.A. § 2336(1).

Palestinian militants' Gaza Strip school bus bombing was not committed "in course of" armed conflict and thus did not come within "act of war" exception to liability under Anti-Terrorism Act of 1991 (ATA); direct attack on noncombatant children was not legitimate act of war as matter of law. *Biton v. Palestinian Interim Self-Government Authority*, 412 F. Supp. 2d 1 (D.D.C. 2005).

33 18 U.S.C.A. § 2338.

34 18 U.S.C.A. § 2335(a).

35 18 U.S.C.A. § 2335(b).

36 *Litle v. Arab Bank, PLC*, 611 F. Supp. 2d 233 (E.D. N.Y. 2009).

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## 74 Am. Jur. 2d Terrorism § 14

American Jurisprudence, Second Edition | May 2021 Update

### Terrorism

Marie K. Pesando, J.D.

### II. Civil Actions and Liability

## § 14. Satisfaction of judgments from blocked assets of terrorists

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

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West's Key Number Digest, [International Law](#)  10.19, 10.30, 10.35

West's Key Number Digest, [War and National Emergency](#)  1132(1), 1132(2)

### A.L.R. Library

Construction and Application of s 201 of Terrorism Risk Insurance Act of 2002, [Public Law 107-297](#), sec. 201, 116 Stat. 2337, 190 A.L.R. Fed. 155

The Terrorism Risk Insurance Act provides that in every case in which a person has obtained a judgment against a terrorist party on a claim based upon an act of terrorism,<sup>1</sup> or for which a terrorist party<sup>2</sup> is not immune, the blocked assets of that terrorist party will be subject to execution or attachment in aid of execution in order to satisfy such judgment to the extent of any compensatory damages for which such terrorist party has been adjudged liable.<sup>3</sup>

The term "blocked assets" excludes property subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations that is being used exclusively for diplomatic or consular purposes.<sup>4</sup>

The Terrorism Risk Insurance Act does not guarantee that any blocked assets will in fact be available when a particular victim seeks to execute on a judgment<sup>5</sup> and does not divest the President of authority to confiscate terrorist assets as provided in the International Emergency Economic Powers Act.<sup>6</sup> Thus, although it has been held that judgments against Iraq were entered against a terrorist party and were thus subject to execution under the Terrorism Risk Insurance Act,<sup>7</sup> under the terms of a

presidential determination issued May 7, 2003, this provision is inapplicable with respect to Iraq,<sup>8</sup> and Iraq's blocked assets have become the property of the United States and thus are shielded by sovereign immunity.<sup>9</sup>

**Observation:**

The Fourth Amendment did not prohibit the federal government from blocking and interfering with the overseas assets of a Saudi Arabian citizen who had been designated as a Specially Designated Global Terrorist (SDGT) by the Department of the Treasury's Office of Foreign Assets Control (OFAC).<sup>10</sup> Moreover, the blocking of assets does not constitute a taking within the meaning of the Fifth Amendment's Takings Clause.<sup>11</sup>

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Footnotes

- 1 An act of terrorism is defined as any act or event certified under the Act or any terrorist activity as defined in the Immigration and Nationality Act. [Pub. L. No. 107-297](#), § 201(d)(1), 116 Stat. 2337 (2002) [set out as a note under [15 U.S.C.A. § 1610](#)], referring to [8 U.S.C.A. § 1182\(a\)\(3\)\(B\)\(iii\)](#).
- 2 A "terrorist party" means a terrorist, a terrorist organization as defined in the Immigration and Nationality Act, or a foreign state designated as a state sponsor of terrorism. [Pub. L. No. 107-297](#), § 201(d)(4), 116 Stat. 2337 (2002) [set out as a note under [15 U.S.C.A. § 1610](#)], referring to [50 App. U.S.C.A. § 2405\(j\)](#) (Export Administration Act of 1979) or [22 U.S.C.A. § 2371](#) (Foreign Assistance Act of 1961).
- 3 [Pub. L. No. 107-297](#), § 201(a), 116 Stat. 2337 (2002) [set out as a note under [15 U.S.C.A. § 1610](#)].
- 4 [Pub. L. No. 107-297](#), § 201(d)(2)(B)(ii), 116 Stat. 2337 (2002) [set out as a note under [15 U.S.C.A. § 1610](#)]. Properties that had been occupied by Iranian diplomatic personnel prior to being blocked by executive order were not "blocked assets" of Iran within meaning of Terrorism Risk Insurance Act (TRIA), as would subject them to attachment to satisfy judgment obtained by family members of American killed in Hezbollah terrorist hijacking, since properties were subject to Vienna Convention on Diplomatic Relations and Vienna Convention on Consular Relations, and in protecting them pursuant to Conventions, the United States was using properties for diplomatic purposes. [Hegna v. Islamic Republic of Iran](#), 287 F. Supp. 2d 608 (D. Md. 2003), aff'd on other grounds, 376 F.3d 226 (4th Cir. 2004).
- 5 [Smith ex rel. Estate of Smith v. Federal Reserve Bank of New York](#), 346 F.3d 264 (2d Cir. 2003).
- 6 [Smith ex rel. Estate of Smith v. Federal Reserve Bank of New York](#), 346 F.3d 264 (2d Cir. 2003), referring to IEEPA, discussed in § 7.
- 7 [Hill v. Republic of Iraq](#), 2003 WL 21057173 (D.D.C. 2003).
- 8 [Acree v. Snow](#), 276 F. Supp. 2d 31 (D.D.C. 2003), judgment aff'd, 78 Fed. Appx. 133 (D.C. Cir. 2003).
- 9 [Smith v. Federal Reserve Bank of New York](#), 280 F. Supp. 2d 314 (S.D. N.Y. 2003), judgment aff'd, 75 Fed. Appx. 860 (2d Cir. 2003), opinion issued, 346 F.3d 264 (2d Cir. 2003) and judgment aff'd, 346 F.3d 264 (2d Cir. 2003).
- 10 [Al-Aqeel v. Paulson](#), 568 F. Supp. 2d 64 (D.D.C. 2008).
- 11 [Islamic American Relief Agency v. Unidentified FBI Agents](#), 394 F. Supp. 2d 34 (D.D.C. 2005), aff'd in part and remanded on other grounds, 477 F.3d 728 (D.C. Cir. 2007).

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## 74 Am. Jur. 2d Terrorism III Refs.

American Jurisprudence, Second Edition | May 2021 Update

### Terrorism

Marie K. Pesando, J.D.

### III. Criminal Prosecutions

[Topic Summary](#) | [Correlation Table](#)

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West's Key Number Digest, [Weapons](#) 🔑 149, 154

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A.L.R. Index, Attorney or Assistance of Attorney

A.L.R. Index, Terrorism

A.L.R. Index, War

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[Validity, Construction, and Application of 18 U.S.C.A. sec. 2333\(a\), Which Allows U.S. Nationals Who Have Been Injured "By Reason of Act of International Terrorism" to Sue Therefor and Recover Treble Damages, 195 A.L.R. Fed. 217](#)

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## 74 Am. Jur. 2d Terrorism § 15

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### Terrorism

Marie K. Pesando, J.D.

### III. Criminal Prosecutions

## § 15. Generally; definitions

[Topic Summary](#) | [Correlation Table](#) | [References](#)

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Stevenson, *Entrapment and Terrorism*, 49 B.C. L. Rev. 125 (2008)

Tinto, *Undercover Policing, Overstated Culpability*, 34 Cardozo L. Rev. 1401 (2013)

The federal criminal terrorism statutes define international and domestic terrorism.<sup>1</sup>

International terrorism means activities that:

- (1) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State or that would be a criminal violation if committed within the jurisdiction of the United States or of any State;
- (2) appear to be intended to intimidate or coerce a civilian population, to influence the policy of a government by intimidation or coercion, or to affect the conduct of a government by mass destruction, assassination, or kidnapping; and
- (3) occur primarily outside the territorial jurisdiction of the United States or transcend national boundaries in terms of the means by which they are accomplished, the persons that they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum.<sup>2</sup>

Domestic terrorism means activities that:

- (1) involve acts dangerous to human life that are a violation of the criminal laws of the United States or any State;
- (2) appear to be intended to intimidate or coerce a civilian population; to influence the policy of a government by intimidation or coercion; or to affect the conduct of a government by mass destruction, assassination, or kidnapping; and
- (3) occur primarily within the territorial jurisdiction of the United States.<sup>3</sup>

Killing, attempting or conspiring to kill, or causing serious bodily harm to a U.S. national while he or she is outside the United States is punishable by death or imprisonment.<sup>4</sup>

One of the federal sentencing guidelines provides for upward sentencing adjustments for felonies that involve or are intended to promote federal crimes of terrorism.<sup>5</sup>

## CUMULATIVE SUPPLEMENT

## Statutes:

[28 U.S.C.A. § 1605B](#), added effective September 28, 2016, provides that a foreign state is not immune from the jurisdiction of the courts of the United States in any case in which money damages are sought against a foreign state for physical injury to person or property or death occurring in the United States and caused by: an act of international terrorism in the United States; and a tortious act or acts of the foreign state, or of any official, employee, or agent of that foreign state while acting within the scope of his or her office, employment, or agency, regardless where the tortious act of the foreign state occurred.

## Cases:

A plaintiff claiming injury as a result of "international terrorism" as defined by the Antiterrorism Act must plead and prove: (1) that the activities underlying the claim for relief were violent or dangerous to human life, and that they were in violation of any federal or state criminal law, or would have violated any federal or state criminal law had they occurred anywhere in the United States; (2) that those activities appeared to be intended to intimidate or coerce a civilian population, influence the policy of a government by intimidation or coercion, or affect the conduct of a government by mass destruction, assassination, or kidnapping, and (3) that the activities occurred primarily outside the territorial jurisdiction of the United States, or transcended national boundaries in terms of the means by which they were accomplished, the persons they appeared intended to intimidate or coerce, or the locale in which the perpetrators operated or sought asylum. [18 U.S.C.A. § 2331\(1\)](#). [Gill v. Arab Bank, PLC](#), 891 F. Supp. 2d 335 (E.D. N.Y. 2012), amended and superseded on other grounds, 2012 WL 4960358 (E.D. N.Y. 2012).

## [END OF SUPPLEMENT]

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## Footnotes

[1](#) [18 U.S.C.A. § 2331](#).

[2](#) [18 U.S.C.A. § 2331\(1\)](#).

Complaint alleging that the murder of plaintiffs' decedent was planned and carried out by several of the individual defendants pursuant to prior authorization, instructions and directives of, inter alia, the Palestinian Interim Self-Government Authority (PA) and the Palestine Liberation Organization (PLO) and was intended to intimidate or coerce a civilian population and influence the policy of a government by intimidation or coercion, sufficiently stated a claim for international terrorism under Anti-Terrorism Act (ATA). [Gilmore v. The Palestinian Interim Self-Government Authority](#), 422 F. Supp. 2d 96 (D.D.C. 2006).

[3](#) [18 U.S.C.A. § 2331\(5\)](#).

[4](#) [18 U.S.C.A. § 2332](#).

[5](#) [U.S.S.G. § 3A1.4](#).

Terrorism enhancement was properly applied in sentencing defendants convicted of conspiring in the United States to murder, kidnap, or maim persons overseas; of conspiring to provide material support or resources for carrying out such activities overseas; and of actually providing such support to radical Islamic groups whose members, like defendants, were intent on displacing "infidel" governments opposed to radical Islamic goals, notwithstanding defendants' allegedly benign motives in engaging in such activity. [U.S. v. Jayyousi](#), 657 F.3d 1085 (11th Cir. 2011).

Application of terrorism enhancement, based on obstructing an investigation of a federal crime of terrorism, requires that: (1) the investigation be into one or more of the enumerated crimes listed in the statute defining federal crimes of terrorism, and (2) that the investigated crimes satisfy the motivational element, namely, that they are calculated to influence or affect the conduct of government by intimidation or coercion. [U.S. v. Benkahla](#), 501 F. Supp. 2d 748 (E.D. Va. 2007), judgment aff'd, 530 F.3d 300 (4th Cir. 2008), cert. denied, 129 S. Ct. 950, 173 L. Ed. 2d 146 (2009).

Terrorism enhancement was properly applied in sentencing defendants convicted of conspiring in the United States to murder, kidnap, or maim persons overseas; of conspiring to provide material support or resources for carrying out such activities overseas; and of actually providing such support to radical Islamic groups whose members, like defendants, were intent on displacing "infidel" governments opposed to radical Islamic goals, notwithstanding defendants' allegedly benign motives in engaging in such activity. [U.S. v. Jayyousi, 2011 WL 4346322 \(11th Cir. 2011\)](#).

Under sentencing guidelines, terrorism adjustment could be applied to sentence for obstructing justice and soliciting crime of violence, notwithstanding that defendant was not convicted of "federal crime of terrorism," where purpose of his soliciting FBI informant was to promote federal crime of terrorism, namely, murder of federal district court judge. [U.S. v. Hale, 448 F.3d 971, 70 Fed. R. Evid. Serv. 267 \(7th Cir. 2006\)](#).

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## 74 Am. Jur. 2d Terrorism § 16

American Jurisprudence, Second Edition | May 2021 Update

### Terrorism

Marie K. Pesando, J.D.

### III. Criminal Prosecutions

## § 16. Terrorist acts transcending national boundaries

[Topic Summary](#) | [Correlation Table](#) | [References](#)

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[Validity, Construction, and Application of 18 U.S.C.A. sec. 2339A, Proscribing Providing Material Support to Terrorists, 197 A.L.R. Fed. 1](#)

[Validity, Construction, and Application of 18 U.S.C.A. sec. 2339B, Which Criminally Prohibits Provision of Material Support or Resources to Foreign Terrorist Organization, 184 A.L.R. Fed. 545](#)

Whoever, involving conduct transcending national boundaries and in certain circumstances, kills, kidnaps, maims, commits an assault resulting in serious bodily injury, or assaults with a dangerous weapon any person within the United States or creates a substantial risk of serious bodily injury to any other person by destroying or damaging any structure, conveyance, or other real or personal property within the United States or by attempting or conspiring to destroy or damage such, in violation of federal or state law, will be subject to prosecution and punishment.<sup>1</sup> Jurisdiction exists where:<sup>2</sup>

- (1) the mail or any facility of interstate or foreign commerce is used in furtherance of the offense;
- (2) the offense obstructs, delays, or affects interstate or foreign commerce or would have done so if it had been consummated;
- (3) the victim, or intended victim, is the federal government or any official, officer, employee, or agent thereof;
- (4) the structure, conveyance, or other real or personal property is, in whole or in part, possessed by or leased to the federal government or any department or agency thereof;

- (5) the offense is committed in the territorial sea of the United States; or
- (6) the offense is committed within the special maritime and territorial jurisdiction of the United States.

**Definition:**

Conduct transcending national boundaries means conduct occurring outside of the United States in addition to the conduct occurring in the United States.<sup>3</sup>

The Attorney General has primary investigative responsibility for all federal crimes of terrorism.<sup>4</sup>

**Definition:**

The term "federal crime of terrorism" means an offense that is calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct, and is a violation of certain federal statutes.<sup>5</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Terrorism enhancement was properly applied in sentencing defendants convicted of conspiring in the United States to murder, kidnap or maim persons overseas, of conspiring to provide material support or resources for carrying out such activities overseas, and of actually providing such support to radical Islamic groups whose members, like defendants, were intent on displacing "infidel" governments opposed to radical Islamic goals, notwithstanding defendants' allegedly benign motives in engaging in such activity. [18 U.S.C.A. §§ 371, 956\(a\)\(1\), 2339A](#); [U.S.S.G. § 3A1.4\(a\)](#), 18 U.S.C.A. [U.S. v. Jayyousi](#), 657 F.3d 1085 (11th Cir. 2011).

### [END OF SUPPLEMENT]

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### Footnotes

<sup>1</sup> [18 U.S.C.A. § 2332b\(a\)\(1\)\(c\)](#).

- 2 18 U.S.C.A. § 2332b(b)(1).
- 3 18 U.S.C.A. § 2332b(g)(1).
- 4 18 U.S.C.A. § 2332b(f).
- 5 18 U.S.C.A. § 2332b(g)(5).

The statute defining a federal crime of terrorism as an offense that is calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct, does not require proof of a defendant's particular motive; it is better understood as imposing a requirement that the underlying felony be calculated to influence or affect the conduct of government by intimidation or coercion or to retaliate against government conduct. [U.S. v. Awan, 607 F.3d 306 \(2d Cir. 2010\)](#), cert. denied, [131 S. Ct. 969, 178 L. Ed. 2d 806 \(2011\)](#).

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## 74 Am. Jur. 2d Terrorism § 17

American Jurisprudence, Second Edition | May 2021 Update

### Terrorism

Marie K. Pesando, J.D.


### III. Criminal Prosecutions

## § 17. Use of weapons of mass destruction

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [War and National Emergency](#)  1123, 1131

West's Key Number Digest, [Weapons](#)  149, 154

### A.L.R. Library

[Validity, Construction, and Application of 18 U.S.C.A. sec. 2332a Prohibiting Use or Threat, Attempt, or Conspiracy to Use Certain Weapons of Mass Destruction, 199 A.L.R. Fed. 1](#)

It is a crime for a person, without lawful authority, to use, threaten, or attempt or conspire to use a weapon of mass destruction against:<sup>1</sup>

- (1) a U.S. national while such national is outside of the United States;
- (2) any person or property within the United States, and the mail or any other facility of interstate or foreign commerce is used in furtherance of the offense; such property is used in interstate or foreign commerce or in an activity that affects interstate or foreign commerce; any perpetrator travels in or causes another to travel in interstate or foreign commerce in furtherance of the offense; or the offense, or the results of the offense, affect interstate or foreign commerce or, in the case of a threat, attempt, or conspiracy, have affected interstate or foreign commerce;
- (3) any property that is owned, leased, or used by the federal government or by any department or agency thereof, whether the property is within or outside of the United States; or
- (4) against any property within the United States that is owned, leased, or used by a foreign government.

**Definition:**

A weapon of mass destruction is:

- (1) any destructive device defined by statute;<sup>2</sup>
- (2) any weapon that is designed or intended to cause death or serious bodily injury through the release, dissemination, or impact of toxic or poisonous chemicals or their precursors;
- (3) any weapon involving a biological agent, toxin, or vector; or
- (4) any weapon that is designed to release radiation or radioactivity at a level dangerous to human life.<sup>3</sup>

The validity of this statute has been upheld.<sup>4</sup>

To threaten to use a weapon of mass destruction, within the meaning of the criminal statute proscribing such threats, a defendant's statement need not involve any expression of intent to act in the future,<sup>5</sup> and the government does not have to prove that the defendant actually intended or was able to carry out his or her threat.<sup>6</sup>

In the case of a threat, an actual or substantial effect on commerce is not required; all that is required is a showing that the use would have affected commerce.<sup>7</sup>

**CUMULATIVE SUPPLEMENT**

**Cases:**

A flash bang grenade is a weapon of mass death and destruction for purposes of statute prohibiting possession of weapon of mass death and destruction. [N.C. Gen. Stat. Ann. §§ 14-288.8\(a\), 14-288.8\(c\)\(1\)](#). [State v. Carey, 373 N.C. 445, 838 S.E.2d 367 \(2020\)](#).

**[END OF SUPPLEMENT]**

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**Footnotes**

- <sup>1</sup> 18 U.S.C.A. § 2332a(a).
- <sup>2</sup> Referring to 18 U.S.C.A. § 921(a)(4).
- <sup>3</sup> 18 U.S.C.A. § 2332a(c).
- <sup>4</sup> [U.S. v. McVeigh, 940 F. Supp. 1571 \(D. Colo. 1996\)](#), [aff'd, 169 F.3d 1255, 51 Fed. R. Evid. Serv. 336 \(10th Cir. 1999\)](#).

5                    [U.S. v. Guevara, 408 F.3d 252 \(5th Cir. 2005\)](#) (defendant's statement in letter containing a white powdery substance, that addressee, a United States district judge, had been exposed to anthrax and that addressee and all Americans would die, was cognizable as "threat" under statute proscribing threats to employ weapons of mass destruction; defendant's statement created apprehension regardless of whether it suggested any future action on defendant's part).

6                    [U.S. v. Guevara, 408 F.3d 252 \(5th Cir. 2005\)](#).

7                    [U.S. v. Wise, 221 F.3d 140 \(5th Cir. 2000\)](#).

Interstate commerce element was satisfied in prosecution for threatening to use weapon of mass destruction where defendant falsely stated to corporate customer service representative, "I just dumped anthrax in your air conditioner"; statute did not require actual effect on interstate commerce in case of threat but rather showing that interstate commerce would have been affected if threat was carried out. [U.S. v. Reynolds, 381 F.3d 404 \(5th Cir. 2004\)](#).

The required effect on interstate commerce was not shown, to allow application of the statute prohibiting threats to use weapons of mass destruction, in a case in which a prison inmate sent letters threatening to kill by the use of anthrax bacilli, in localized areas, when the only interstate aspect was possible deployment across state lines of investigative and technical personnel to combat infections. [U.S. v. Slaughter, 116 F. Supp. 2d 688, 199 A.L.R. Fed. 719 \(W.D. Va. 2000\)](#).

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## 74 Am. Jur. 2d Terrorism § 18

American Jurisprudence, Second Edition | May 2021 Update

### Terrorism

Marie K. Pesando, J.D.

### III. Criminal Prosecutions

## § 18. Bombings of places of public use and government facilities

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [War and National Emergency](#)  1123, 1131

It is a crime to unlawfully deliver, place, discharge, or detonate an explosive or other lethal device in or against a place of public use, a state or government facility, a public transportation system, or an infrastructure facility with the intent to cause death or serious bodily injury or with the intent to cause extensive destruction of such a place where such destruction results or is likely to result in economic loss. Attempts and conspiracies will be similarly punished.<sup>1</sup>

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### Footnotes

<sup>1</sup> [18 U.S.C.A. § 2332f\(a\)](#).

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## 74 Am. Jur. 2d Terrorism § 19

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### Terrorism

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### III. Criminal Prosecutions

## § 19. Financial transactions with countries supporting international terrorism

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [War and National Emergency](#)  1123, 1131

A person in the United States who engages in a financial transaction with a country that he or she knows or has reasonable cause to know has been designated as a country supporting international terrorism will be subject to a fine and/or imprisonment.<sup>1</sup>

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### Footnotes

- <sup>1</sup> [18 U.S.C.A. § 2332d\(a\)](#).  
A country may be designated as a country supporting terrorism under the Export Administration Act of 1979, [50 App. U.S.C.A. § 2405](#).

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## 74 Am. Jur. 2d Terrorism § 20

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### Terrorism

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### III. Criminal Prosecutions

## § 20. Terrorist attacks and other acts of violence against mass transportation systems

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [War and National Emergency](#)  1123, 1131

Various attacks constitute terrorist crimes where they are committed against a mass transportation provider engaged in or affecting interstate or foreign commerce or, if in the course of committing such act, the perpetrator travels or communicates across a state line or transports materials across a state line. These attacks include:<sup>1</sup>

- (1) placing any biological agent or toxin, destructive substance, or destructive device in, upon, or near railroad on-track equipment or a mass transportation vehicle with intent to endanger the safety of any person or with a reckless disregard for the safety of human life;
- (2) setting fire to, undermining, making unworkable, unusable, or hazardous to work on or use, or placing any biological agent or toxin, destructive substance, or destructive device in, upon, or near any tunnel, bridge, viaduct, trestle, track, electromagnetic guideway, signal, station, depot, warehouse, terminal, or any other way, structure, property, or appurtenance used in the operation of, or in support of the operation of, a railroad carrier and with intent to, or knowing or having reason to know that, such activity would likely derail, disable, or wreck railroad on-track equipment or garage, terminal, structure, track, electromagnetic guideway, supply, or facility used in the operation of, or in support of the operation of, a mass transportation vehicle and with intent to, or knowing or having reason to know that, such activity would likely derail, disable, or wreck a mass transportation vehicle used, operated, or employed by a mass transportation provider;
- (3) placing or releasing a hazardous material or a biological agent or toxin on or near any of the property described above with intent to endanger the safety of any person or with reckless disregard for the safety of human life;
- (4) with intent to endanger the safety of any person, or with a reckless disregard for the safety of human life, interfering with, disabling, or incapacitating any dispatcher, driver, captain, locomotive engineer, railroad conductor, or other person while the person is employed in dispatching, operating, controlling, or maintaining railroad on-track equipment or a mass transportation vehicle;

(5) surveilling, photographing, videotaping, diagramming, or otherwise collecting information with the intent to plan or assist in planning any of these acts;

(6) attempting, threatening, or conspiring to engage in any such violation.

An aggravated offense is committed when:<sup>2</sup>

(1) the railroad on-track equipment or mass transportation vehicle was carrying a passenger or employee at the time of the offense;

(2) the railroad on-track equipment or mass transportation vehicle was carrying high-level radioactive waste or spent nuclear fuel at the time of the offense; or

(3) the offense was committed with the intent to endanger the safety of any person or with a reckless disregard for the safety of any person, and the railroad on-track equipment or mass transportation vehicle was carrying a hazardous material at the time of the offense.

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#### Footnotes

<sup>1</sup> 18 U.S.C.A. § 1992(a).

<sup>2</sup> 18 U.S.C.A. § 1992(b).

## 74 Am. Jur. 2d Terrorism § 21

American Jurisprudence, Second Edition | May 2021 Update

### Terrorism

Marie K. Pesando, J.D.

### III. Criminal Prosecutions

## § 21. Harboring or concealing terrorists

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [War and National Emergency](#)  1123, 1131

### A.L.R. Library

[Validity, Construction, and Application of 18 U.S.C.A. sec. 2339A, Proscribing Providing Material Support to Terrorists, 197 A.L.R. Fed. 1](#)

[Validity, Construction, and Application of 18 U.S.C.A. sec. 2339B, Which Criminally Prohibits Provision of Material Support or Resources to Foreign Terrorist Organization, 184 A.L.R. Fed. 545](#)

It is a criminal offense to harbor or conceal any person whom a person knows, or has reasonable grounds to believe, has committed, or is about to commit, a terrorist offense.<sup>1</sup>

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### Footnotes

<sup>1</sup> [18 U.S.C.A. § 2339\(a\)](#).

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## 74 Am. Jur. 2d Terrorism § 22

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### Terrorism

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### III. Criminal Prosecutions

## § 22. Providing material support to terrorists

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [War and National Emergency](#)  1123, 1131

### A.L.R. Library

[Validity, Construction, and Application of 18 U.S.C.A. sec. 2339A, Proscribing Providing Material Support to Terrorists, 197 A.L.R. Fed. 1](#)

[Validity, Construction, and Application of 18 U.S.C.A. sec. 2339B, Which Criminally Prohibits Provision of Material Support or Resources to Foreign Terrorist Organization, 184 A.L.R. Fed. 545](#)

Providing material support or resources to terrorists, or concealing or disguising the nature, location, source, or ownership of such material support or resources, is a federal crime.<sup>1</sup>

### Definitions:

Material support or resources means any property, tangible or intangible, or service, including currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safe houses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, and transportation. It does not include medicine or religious materials.<sup>2</sup> The term "personnel" refers to individuals provided or made available to prepare for or carry out the crimes prohibited by the statute but not to individuals engaged in entirely independent action intended to carry out the foreign terrorist organization's objectives; the statute does not require that the individual be an employee or quasi-employee but only that there be some form of coordination, joint action, or understanding.<sup>3</sup>

The validity of this statute<sup>4</sup> has been upheld<sup>5</sup> although the prohibition on the provision of expert advice or assistance has been found to be impermissibly vague.<sup>6</sup> A provider of material support or resources need not have had the specific intent to aid or encourage the particular attacks that injured the plaintiffs in order to be liable under the statute.<sup>7</sup>

Because civil liability is restricted to American victims, the defendant must know or intend that the terrorism or terrorist group that it is supporting targets Americans.<sup>8</sup> A donation to a terrorist group that targets Americans outside the United States is within the scope of the statute.<sup>9</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Statute prohibiting intentionally and unlawfully attempting to possess nuclear material encompassed acts of self-harm as well as harm to others. 18 U.S.C.A. § 831. *United States v. Ryan*, 428 F. Supp. 3d 31 (W.D. Wis. 2019).

## [END OF SUPPLEMENT]

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### Footnotes

- 1 18 U.S.C.A. § 2339A(a).
- 2 18 U.S.C.A. § 2339A(b)(1).  
The term "training" means instruction or teaching designed to impart a specific skill as opposed to general knowledge. 18 U.S.C.A. § 2339A(b)(2).  
The term "expert advice or assistance" means advice or assistance derived from scientific, technical, or other specialized knowledge. 18 U.S.C.A. § 2339A(b)(3).
- 3 *U.S. v. Abu-Jihaad*, 600 F. Supp. 2d 362 (D. Conn. 2009).  
Statute criminalizing the provision of material support to terrorists applied to conduct of imprisoned terrorist's attorney and her translator, who allegedly passed messages concerning a conspiracy to kill and kidnap persons in a foreign country, to and from the terrorist; conduct made the terrorist, who was otherwise subject to special administrative measures that limited his communications, available to his coconspirators as "personnel." *U.S. v. Sattar*, 314 F. Supp. 2d 279 (S.D. N.Y. 2004), aff'd, 590 F.3d 93 (2d Cir. 2009), cert. denied, 130 S. Ct. 1924, 176 L. Ed. 2d 404 (2010).
- 4 18 U.S.C.A. § 2339A.
- 5 *U.S. v. Awan*, 459 F. Supp. 2d 167 (E.D. N.Y. 2006), aff'd, 384 Fed. Appx. 9 (2d Cir. 2010), cert. denied, 131 S. Ct. 969, 178 L. Ed. 2d 806 (2011); *U.S. v. Sattar*, 395 F. Supp. 2d 79 (S.D. N.Y. 2005), aff'd, 590 F.3d 93 (2d Cir. 2009), cert. denied, 130 S. Ct. 1924, 176 L. Ed. 2d 404 (2010); *U.S. v. Amawi*, 545 F. Supp. 2d 681 (N.D. Ohio 2008).
- 6 *Humanitarian Law Project v. Ashcroft*, 309 F. Supp. 2d 1185 (C.D. Cal. 2004).
- 7 *Wultz v. Islamic Republic of Iran*, 755 F. Supp. 2d 1 (D.D.C. 2010).
- 8 *Abecassis v. Wyatt*, 785 F. Supp. 2d 614 (S.D. Tex. 2011).

9 [Boim v. Holy Land Foundation for Relief and Development, 549 F.3d 685 \(7th Cir. 2008\)](#), cert. denied, 130 S. Ct. 458, 175 L. Ed. 2d 324 (2009).

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## 74 Am. Jur. 2d Terrorism § 23

American Jurisprudence, Second Edition | May 2021 Update

### Terrorism

Marie K. Pesando, J.D.

### III. Criminal Prosecutions

## § 23. Providing material support or resources to foreign terrorist organizations

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [War and National Emergency](#)  1123, 1131

### A.L.R. Library

[Constitutional Validity of Terrorism Prosecutions, Statutes, and Enemy Combatant Detention and Proceedings—Supreme Court Cases](#), 49 A.L.R. Fed. 2d 1

[Validity, Construction, and Application of 18 U.S.C.A. sec. 2339A, Proscribing Providing Material Support to Terrorists](#), 197 A.L.R. Fed. 1

[Validity, Construction, and Application of 18 U.S.C.A. sec. 2339B, Which Criminally Prohibits Provision of Material Support or Resources to Foreign Terrorist Organization](#), 184 A.L.R. Fed. 545

Whoever knowingly provides material support or resources to a foreign terrorist organization, or attempts or conspires to do so, is subject to punishment.<sup>1</sup> This provision is, on its face, a preventive measure in that it does not criminalize terrorist attacks themselves but aid that makes the attacks more likely to occur.<sup>2</sup>

### Observation:

Liability may be found under the statute even where support was not provided directly to a foreign terrorist organization (FTO); such a circumstance may be found where an entity provides support to an alias or agent of an FTO.<sup>3</sup>

To violate this statute, a person must have knowledge that the organization is a designated terrorist organization, that the organization has engaged or engages in terrorist activity, or that the organization has engaged or engages in terrorism.<sup>4</sup>

The use of the word "knowingly" imposes a mens rea requirement.<sup>5</sup> Any financial institution that becomes aware that it has possession of, or control over, any funds in which a foreign terrorist organization, or its agent, has an interest, must retain possession of, or maintain control over, such funds and report the existence of such funds to the Secretary of the Treasury.<sup>6</sup> Any financial institution that knowingly fails to comply with this provision shall be subject to a civil penalty.<sup>7</sup> Whenever it appears to the Secretary of the Treasury or the Attorney General that any person is engaged in, or is about to engage in, providing material support or resources to a terrorist organization, the Attorney General may initiate civil action in federal district court to enjoin such act.<sup>8</sup> This enforcement scheme does not create an implied private right of action for injunctive relief.<sup>9</sup>

**Definition:**

The term "material support or resources," as used in the applicable provision, has the same meaning as in the statute governing the provision of material support to terrorists.<sup>10</sup>

The validity of the applicable statute<sup>11</sup> has been upheld<sup>12</sup> although portions of the statute have been held to be impermissibly vague.<sup>13</sup>

**Observation:**

Nothing in this statute shall be construed or applied so as to abridge the exercise of rights guaranteed under the First Amendment to the Constitution of the United States.<sup>14</sup>

No person may be prosecuted under the statute in connection with the term "personnel" unless that person has knowingly provided, attempted to provide, or conspired to provide a foreign terrorist organization with one or more individuals (who may be or include him- or herself) to work under that terrorist organization's direction or control or to organize, manage,



supervise, or otherwise direct the operation of that organization. Individuals who act entirely independently of the foreign terrorist organization to advance its goals or objectives shall not be considered to be working under the foreign terrorist organization's direction and control.<sup>15</sup> Moreover, no person may be prosecuted under the statute in connection with the term "personnel," "training," or "expert advice or assistance" if the provision of that material support or resources to a foreign terrorist organization was approved by the Secretary of State with the concurrence of the Attorney General. The Secretary of State may not approve the provision of any material support that may be used to carry out terrorist activity.<sup>16</sup>

The statute does not require proof that a defendant intended to further a foreign terrorist organization's illegal activities<sup>17</sup> but only that the defendant knew about the organization's connection to terrorism regardless of whether the proposed activity consists of speech.<sup>18</sup> There is no "overt act" requirement.<sup>19</sup>

**Practice Tip:**

Defendants indicted under [18 U.S.C.A. § 2339B](#) may be subject to pretrial detention.<sup>20</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

The mental state in statute prohibiting providing material support or resources to a terrorist organization, knowing or intending that they are to be used in preparation for, or in carrying out, specific criminal activities extends both to the support itself, and to the underlying purposes for which the support is given. [18 U.S.C.A. § 2339A](#). [U.S. v. Mehanna](#), 735 F.3d 32 (1st Cir. 2013).

Statute prohibiting material support for a known terrorist organization does not violate due process; statute does not penalize mere association with a foreign terrorist organization, and the "personal guilt" requirement of the Due Process Clause is satisfied by the knowing supply of material aid to a terrorist organization. [U.S.C.A. Const.Amend. 5](#); [18 U.S.C.A. § 2339B](#). [U.S. v. Al Kassar](#), 660 F.3d 108 (2d Cir. 2011).

In determining applicability of terrorism enhancement in sentencing defendant for providing material support to designated foreign terrorist organization based on his actions to enter Iraq to join Islamic State of Iraq and Syria (ISIS), it was for district court to decide in first instance whether, as factual matter, defendant's conduct was calculated to influence or affect conduct of government of Iraq or United States, rather than Syrian government that United States had ceased to recognize. [U.S.S.G. § 3A1.4](#). [United States v. Khan](#), 938 F.3d 713 (5th Cir. 2019).

Sentencing court's finding that defendant committed a crime calculated to retaliate against the government, as basis for terrorism enhancement to offense level under Sentencing Guidelines, was not clearly erroneous, at sentencing for attempting to provide material support to a foreign terrorist organization; defendant's writings on social networking website and in various private notes reflected a hatred of the U.S. government, arising from government's treatment of Muslims in general and specifically its treatment of defendant as a designated sex offender, which caused him to want to go to Syria so he could "join[ ] my brothers"

in a foreign terrorist organization "for the war against American liars," and so he could "kill me some American soldier boys." 18 U.S.C.A. §§ 2332b(g)(5)(A), 2339B(a)(1); U.S.S.G. § 3A1.4. *United States v. Van Haften*, 881 F.3d 543 (7th Cir. 2018).

Evidence at sentencing, that defendant, in opening social media accounts for people he understood to be ISIS sympathizers, knew that he was providing support to ISIS sympathizers, and knew that ISIS was a terrorist organization, did not establish that defendant's underlying offense, of attempting to provide material support to a foreign terrorist organization, was committed with specific intent to influence or affect the conduct of government by intimidation or coercion, as would support terrorism enhancement of offense level and criminal history category under Sentencing Guidelines. 18 U.S.C.A. §§ 2332b(g)(5), 2339B(a)(1); U.S.S.G. § 3A1.4. *United States v. Alhaggagi*, 978 F.3d 693 (9th Cir. 2020).

The in camera, ex parte review process authorized by the Foreign Intelligence Surveillance Act (FISA) did not violate due process, in prosecution for conspiring and attempting to provide material support to a designated foreign terrorist organization. U.S. Const. Amend. 5; Foreign Intelligence Surveillance Act of 1978 §§ 105, 304, 50 U.S.C.A. §§ 1805(a)(2), 1824(a)(2). *United States v. Elhuzayel*, 807 Fed. Appx. 621 (9th Cir. 2020).

Criteria used by Terrorist Screening Center (TSC) in determining whether to place individuals on No Fly List were governed by constitutionally sufficient standards as applied to individuals who had traveled to Somalia to fight jihad and to train for jihad, received weapons training at camp associated with foreign terrorist organization (FTO), fought with group that likely included members of al-Qaeda, and endorsed specially designated global terrorist's message; rules governing No Fly List required nominating agency to provide summary of underlying substantive information demonstrating that nominee met criteria for inclusion on list, and that information was then assessed according to interagency Watchlisting Guidance to determine whether there was reasonable suspicion that individual represented threat of committing terrorist act. U.S. Const. Amend. 5; 18 U.S.C.A. § 2331. *Kashem v. Barr*, 941 F.3d 358 (9th Cir. 2019).

Absence from indictment on charge of providing material support to foreign terrorist organization (FTO) of any reference to requirements of subsection regarding word "personnel," as used in definition of material support, did not create prejudicial result, and thus subsection did not pertain to facts essential to offense that were required to be pleaded in indictment; defendant was fully apprised with what crime had been charged, government would not have been able to change its argument over time, relevant definition of "personnel" had been laid out for defendant and grand jury, subsection did not go to very core of criminality, and government would have to prove at trial that attempt to provide material support included that defendant attempted to place himself under direction or control of FTO. 18 U.S.C.A. § 2339B(h). *United States v. Shafi*, 252 F. Supp. 3d 787 (N.D. Cal. 2017).

Statute prohibiting providing or collecting funds with the intention that such funds be used, or with knowledge that such funds are to be used, to further the activities of a designated foreign terrorist organization, does not require a showing of specific intent that the defendant acted to further the organization's terrorist activities or intended to aid or encourage the particular attack; mere knowledge that the funds would be used to carry out the predicate act is enough. 18 U.S.C.A. § 2339C. *United States v. Elshinawy*, 228 F. Supp. 3d 520 (D. Md. 2016).

As applied to defendant, statute prohibiting providing material support and financial services, in the form of personnel, services, and financial services, to a designated foreign terrorist organization, was not unconstitutionally vague, but gave him fair notice of the prohibited conduct, and thus satisfied the Due Process Clause; term "personnel," as used in the statute, did not extend to independent actors, but described employee-like operatives who served the designated group and worked at its command or who provided themselves to serve the organization, the terms "services (including means and methods of communication)" and "financial services," as applied to defendant, were not unconstitutionally vague, and the conduct prohibited was articulated in the statute with the requisite definiteness to assure that an ordinary person understood what was barred by law. U.S.C.A. Const. Amend. 5; 18 U.S.C.A. § 2339B. *United States v. Elshinawy*, 228 F. Supp. 3d 520 (D. Md. 2016).

Defendants, charged with conspiring to provide, providing, and attempting to provide material support or resources to a designated foreign terrorist organization (FTO), were barred from arguing that the organization's designation as an FTO was improper; Government was only required to prove, as an element of the offense, that the organization to which defendants allegedly provided support had been designated an FTO, not whether that designation was proper. *Immigration and Nationality Act*, § 219, 8 U.S.C.A. § 1189; 18 U.S.C.A. § 2339B. *U.S. v. Ahmed*, 94 F. Supp. 3d 394 (E.D. N.Y. 2015).

Providing material support or resources to a terrorist organization and providing or collecting funds with the intention or knowledge that such funds will be used to carry out terrorist activities are considered to be acts of "international terrorism," within the meaning of the Antiterrorism Act. 18 U.S.C.A. §§ 2333(a), 2339B, 2339C. *Weiss v. National Westminster Bank, PLC*, 936 F. Supp. 2d 100 (E.D. N.Y. 2013).

First Amendment's guarantee of associational freedom is no license to supply terrorist organizations with resources or material support in any form, including services as a combatant. *U.S. Const. Amend. 1*; 18 U.S.C.A. § 2339B. *United States v. Nagi*, 254 F. Supp. 3d 548 (W.D. N.Y. 2017).

Statute prohibiting providing, conspiring to provide, or attempting to provide material support to foreign terrorist organizations criminalizes providing personnel through self-recruitment, i.e., volunteering oneself to serve under the direction of a terrorist organization. 18 U.S.C.A. § 2339B. *United States v. Nagi*, 254 F. Supp. 3d 548 (W.D. N.Y. 2017).

Defendant charged with conspiracy to provide material support and resources to a designated foreign terrorist organization was not entitled to a *Franks* hearing to allow counsel to test the veracity of the government's Foreign Intelligence Surveillance Act (FISA) applications, based on conjectural allegations of impropriety. Foreign Intelligence Surveillance Act of 1978 § 305, 50 U.S.C.A. § 1825. *United States v. Aziz*, 228 F. Supp. 3d 363 (M.D. Pa. 2017).

## [END OF SUPPLEMENT]

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### Footnotes

- 1 18 U.S.C.A. § 2339B(a)(1).  
A defendant who intended to go to Afghanistan to fight for the Taliban, who were the protectors of al-Qaeda, would not thereby provide material support or resources to al-Qaeda, and therefore, he was not guilty of conspiracy to provide material support to al-Qaeda. *U.S. v. Khan*, 309 F. Supp. 2d 789, 7 A.L.R. Fed. 2d 625 (E.D. Va. 2004), *aff'd* in part, remanded in part on other grounds, 461 F.3d 477 (4th Cir. 2006), as amended, (Sept. 7, 2006).
- 2 *In re Terrorists Attacks on September 11, 2001*, 740 F. Supp. 2d 494 (S.D. N.Y. 2010).
- 3 *Goldberg v. UBS AG*, 660 F. Supp. 2d 410 (E.D. N.Y. 2009).
- 4 18 U.S.C.A. § 2339B(a)(1).  
In light of fact that the Palestinian militant organization alleged to have carried out the bombing of a convoy, in Gaza, that killed the plaintiffs' decedent, had not been designated a foreign terrorist organization (FTO) by the State Department, allegation, in action, under the Anti-Terrorism Act (ATA), that the Palestinian Authority (PA) supported the militant organization was insufficient to establish a violation of statute criminalizing knowingly providing material support to a foreign terrorist organization. *Estate of Parsons v. Palestinian Authority*, 715 F. Supp. 2d 27 (D.D.C. 2010), *aff'd*, 651 F.3d 118 (D.C. Cir. 2011).
- 5 *U.S. v. Al-Arian*, 308 F. Supp. 2d 1322 (M.D. Fla. 2004).
- 6 18 U.S.C.A. § 2339B(a)(2).
- 7 18 U.S.C.A. § 2339B(b).
- 8 18 U.S.C.A. § 2339B(c).
- 9 *Linde v. Arab Bank, PLC*, 353 F. Supp. 2d 327 (E.D. N.Y. 2004).

10 18 U.S.C.A. § 2339B(g)(4), referring to 18 U.S.C.A. § 2339A(b), discussed in § 22.  
11 18 U.S.C.A. § 2339B.  
12 Holder v. Humanitarian Law Project, 130 S. Ct. 2705, 177 L. Ed. 2d 355, 49 A.L.R. Fed. 2d 567 (2010);  
U.S. v. Kassir, 2011 WL 4375654 (2d Cir. 2011); U.S. v. Farhane, 634 F.3d 127, 84 Fed. R. Evid. Serv.  
794 (2d Cir. 2011); Humanitarian Law Project v. Reno, 205 F.3d 1130 (9th Cir. 2000); People's Mojahedin  
Organization of Iran v. Department of State, 327 F.3d 1238 (D.C. Cir. 2003); U.S. v. Afshari, 635 F. Supp.  
2d 1110 (C.D. Cal. 2009); U.S. v. Al-Arian, 308 F. Supp. 2d 1322 (M.D. Fla. 2004); U.S. v. Marzook, 383  
F. Supp. 2d 1056 (N.D. Ill. 2005); U.S. v. Assi, 414 F. Supp. 2d 707 (E.D. Mich. 2006); U.S. v. Warsame,  
537 F. Supp. 2d 1005 (D. Minn. 2008); U.S. v. Taleb-Jedi, 566 F. Supp. 2d 157 (E.D. N.Y. 2008); U.S. v.  
Taleb-Jedi, 566 F. Supp. 2d 157 (E.D. N.Y. 2008); U.S. v. Sattar, 272 F. Supp. 2d 348 (S.D. N.Y. 2003); U.S.  
v. Lindh, 212 F. Supp. 2d 541 (E.D. Va. 2002).  
13 Humanitarian Law Project v. Reno, 205 F.3d 1130 (9th Cir. 2000); Humanitarian Law Project v. Ashcroft,  
309 F. Supp. 2d 1185 (C.D. Cal. 2004); U.S. v. Sattar, 272 F. Supp. 2d 348 (S.D. N.Y. 2003).  
14 18 U.S.C.A. § 2339B(i).  
15 18 U.S.C.A. § 2339B(h).  
16 18 U.S.C.A. § 2339B(j).  
17 U.S. v. Marzook, 383 F. Supp. 2d 1056 (N.D. Ill. 2005); U.S. v. Warsame, 537 F. Supp. 2d 1005 (D. Minn.  
2008).  
18 Holder v. Humanitarian Law Project, 130 S. Ct. 2705, 177 L. Ed. 2d 355, 49 A.L.R. Fed. 2d 567 (2010).  
19 U.S. v. Abdi, 498 F. Supp. 2d 1048 (S.D. Ohio 2007).  
20 U.S. v. Goba, 240 F. Supp. 2d 242 (W.D. N.Y. 2003); U.S. v. Goba, 220 F. Supp. 2d 182 (W.D. N.Y. 2002).

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## 74 Am. Jur. 2d Terrorism § 24

American Jurisprudence, Second Edition | May 2021 Update

### Terrorism

Marie K. Pesando, J.D.

### III. Criminal Prosecutions

## § 24. Financing terrorism

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [War and National Emergency](#)  [1123](#), [1131](#), [1132\(1\)](#)

### A.L.R. Library

[Validity, Construction, and Application of 18 U.S.C.A. sec. 2339A, Proscribing Providing Material Support to Terrorists, 197 A.L.R. Fed. 1](#)

[Validity, Construction, and Application of 18 U.S.C.A. sec. 2339B, Which Criminally Prohibits Provision of Material Support or Resources to Foreign Terrorist Organization, 184 A.L.R. Fed. 545](#)

It is a crime to provide or collect funds with the intention that such funds be used, or with the knowledge that such funds are to be used, in order to carry out an act that constitutes an offense under certain treaties, or any other act intended to cause death or serious bodily injury to a civilian, or to any person not actively involved in hostilities in a situation of armed conflict, when the purpose of such act is to intimidate a population or to compel a government or an international organization to do or abstain from doing any act.<sup>1</sup>

### Definition:

The term "funds" means assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including coin, currency, bank credits, travelers checks, bank checks, money orders, shares, securities, bonds, drafts, and letters of credit.<sup>2</sup>

This provision does not require a showing of specific intent that the defendant acted to further the organization's terrorist activities or that it intended to aid or encourage the particular attack giving rise to a plaintiff's injuries; mere knowledge that the funds provided and collected would be used to carry out the predicate act is enough.<sup>3</sup> Providing financial services to a terrorist organization falls within the scope of the statute to the extent that the financial institution receives and transmits the organization's funds.<sup>4</sup>

Because civil liability is restricted to American victims, the defendant must know or intend that the terrorism or terrorist group that it is supporting targets Americans.<sup>5</sup>

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#### Footnotes

- 1 18 U.S.C.A. § 2339C(a)(1).
- 2 18 U.S.C.A. § 2339C(e)(1).
- 3 *Wultz v. Islamic Republic of Iran*, 755 F. Supp. 2d 1 (D.D.C. 2010).
- 4 *Wultz v. Islamic Republic of Iran*, 755 F. Supp. 2d 1 (D.D.C. 2010).
- 5 *Abecassis v. Wyatt*, 785 F. Supp. 2d 614 (S.D. Tex. 2011).

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## 74 Am. Jur. 2d Terrorism Correlation Table

American Jurisprudence, Second Edition | May 2021 Update

### Terrorism

Marie K. Pesando, J.D.

[Topic Summary](#)

## Correlation Table

### Terrorism

#### 2004

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

#### 2012

[§1](#)  
DELETED  
[§2](#)  
[§3](#)  
[§4](#)  
[§5](#)  
[§6](#)  
[§7](#)  
[§8](#)  
[§9](#)  
[§11](#)  
[§12](#)  
[§13](#)  
[§14](#)  
[§15](#)  
[§16](#)  
[§17](#)  
[§18](#)  
[§19](#)  
[§20](#)  
[§21](#)  
[§22](#)  
[§23](#)  
[§24](#)

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